Supreme Court, U.S.
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No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

DAVID J. GALLO, Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federally-licensed attorney holds office during good behavior (as this Court has held), or, alternatively, whether (as the court of appeal held) an attorney may be deprived of his or her office on any grounds which withstand scrutiny under the rational basis standard (*i.e.*, where there is "... any *conceivable* justification[] ..." for removal from office).

2. Whether a district court may require membership in the bar of its forum state as a condition of membership in its own bar.

3. Whether a federally-licensed attorney is entitled to prior notice comporting with the requirements of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), as a prerequisite to the entry of an order by a district court which effects termination of the attorney's license to practice before that court.

4. Whether, and if so under what circumstances, the posting of notice on an Internet web site may satisfy, in whole or in part, the notice requirements of *Mullane*.

5. Whether this Court should exercise its inherent supervisory power to reinstate the law licenses of the 6,796 attorneys who were disbarred by Respondent court's General Order 99-15.

PARTIES TO THE PROCEEDINGS

Petitioner is David J. Gallo, Esq., a member of the bar of this Court.

Respondent is the United States District Court for the District of Arizona.

Petitioner questions whether the parties to the Underlying Action qualify as parties, for purposes of Rule 14.1(b) of the Rules of this Court. None of them participated in the proceedings in the court of appeals. The following information is provided for prophylactic purposes:

The plaintiffs in the Underlying Action were:

Tommie L. Bartlett; James M. Byrd; Brandon J. Byrd, James M. Byrd, Custodian; Whitney S. Byrd, James M. Byrd, Custodian; Shane C. Byrd, James M. Byrd, Custodian; Barbara Byrd; Roy E. Carty; Mildred M. Carty; George R. Cason, Individually And as Trustee of The Cason Family Trust Dtd 4/8/88; Darlene Cason, Individually And as Trustee of The Cason Family Trust Dtd 4/8/88; Henry B. Chenoweth, Trustee of The Chenoweth Trust Dtd 4/21/95; Robert Colvin; Josephine Colvin; Coy Clements; Christine Davis; Chris Davis; George Dean; Allan H. Demuth, Trustee of The Demuth Family Revocable Trust Dtd 10/25/96; Marilynn N. Demuth, Trustee of The Demuth Family Revocable Trust Dtd 10/25/96; Elizabeth F. Dunlap, Trustee of The Elizabeth F. Dunlap Trust Dtd 4/28/92; Otto T. Edmonds; Carolyn Edmonds; Betsy P. Fisher; Ethel K. Ford; Beau Forstar; Gerald Freligh Sr.;

Delphia Freligh; Ruth J. Gartlind, Trustee of the Thelma Palmiller Revocable Trust; James Gould; Doreen Gould; Lee Gudgel, Trustee of the Gudgel Revocable Trust; Raydene Gudgel, Trustee of the Gudgel Revocable Trust; Eric Harrison; Robin Harrison; William J. Hegeman, Trustee of the Hegeman Rev. Living Trust Dtd 4/16/96; Debra L. Hegeman, Trustee of the Hegeman Rev. Living Trust Dtd 4/16/96; Avel G. Henry; Bonnie Hilton; Leo James; Audrey James; Richard James; Thomas B. Jeffries, Individually and as Trustee of the Thomas B. Jeffries Trust Dtd 5/10/94, and as Trustee of the Thomas B. Jeffries Charitable Remainder Unitrust; Thomas F. Joffee, Trustee of the Joffee Trust Dtd 11/23/93; Helen S. Joffee, Trustee of the Joffee Trust Dtd 11/23/93; Theresa E. Maiers, Trustee of the Maiers Living Trust; Raymond Kinsman; Philip W. Knights, Individually and as Trustee of the Philip W. and Margaret A. Knights Trust Dated 8/19/1994; Gerald Lilly; Karen V. Lilly; Ida E. Lovelace; Clifton Lovelace; Lucille Mackellar, Trustee of the Lucille F. Mackellar Trust; Lorene M. Mahan; Ruth Martin; Tammy L. Miller; Carolyn Marshall, Individually and as Trustee for the Marshall Intervivos Trust Dtd 2/2/98; Robert Marshall, Trustee for the Marshall Intervivos Trust Dtd 2/2/98; Sybil Nelson, Trustee of the O.L. Nelson Survivors Trust; L.R. Nelson, Individually and on Behalf of J & R Auto Salvage; Linda Ann Nelson; Robert McCray; Dwight Pardue; Navada Pardue; A. Grace Pearson; and Robert Rachuig.

The defendants in the Underlying Action were:

Arthur Andersen L.L.P., a Limited Liability Partnership; Thomas D. Grabinski; Deanne Grabinski; Donald Deardoff; Berry Norwood; Edgar Alan Kuhn; Rebecca C. Kuhn; Jalma W. Hunsinger; Carole K. Hunsinger; Harold D.

Friend; Stephanie B. Friend; Lawrence Dwain Hoover; Beva J. Hoover; Arizona Southern Baptist Convention, an Arizona Corporation; Jennings, Strouss & Salmon, P.L.C.; Steve Bass; Clyde Taylor; Bruce Fischer; Scott McKown; Sharon Gillespie; Gary D. Cravens; Wes Posey; Carroll D. Burdick; Curt Wilson; Hicks Smith; Glen Crotts; William Crotts; Margaret Crotts; and David Sloan.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

No. _____

DAVID J. GALLO, Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

David J. Gallo ("Petitioner") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-31a) is reported at 349 F.3d 1169. The memorandum order of the district court (App., *infra*, 33a-35a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered 19

November 2003. Petitioner's petition for rehearing in the court of appeals was denied by order entered 31 December 2003. (App., *infra*, 32a.) The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1254(1).

RULE INVOLVED IN THE CASE

This case involves Rule 1.5(a) of the Local Rules of the United States District Court for the District of Arizona, which provides, in relevant part:

> (a) **Admission to the Bar of this Court.** Admission to ***and continuing membership in*** the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona. ...

(Emphasis added.)

STATEMENT

Petitioner is not now, nor has he ever been, a member of the State Bar of Arizona.

On 28 July 1995, Petitioner "... was duly admitted and qualified to practice as an Attorney in the [United States] District Court [for the District of Arizona] ...", as recited on the Certificate issued by the clerk of that court. The basis for such admission was Petitioner's membership in good standing in another district court, which was all that was required at the time. (*See*, App., *infra*, 2a.)

On 10 September 1999, the United States District Court for

the District of Arizona ("Respondent") entered its General Order No. 99-15. General Order No. 99-15 effected amendments to Respondent's local rules of court. Among these amendments was an amendment to Respondent's Local Rule 1.5(a), which added the language excerpted at 2, *supra.*

As explained *infra,* the courts below have now determined that the amendment to Local Rule 1.5(a) operated to "divest" Petitioner ***and at least 6,795 similarly-situated attorneys*** of their law licenses. (*See,* App., *infra,* 13a, and 30a; *see also,* App. 26a: "... the amendment effectively terminated [Petitioner's] membership in the bar ...")[1]

Prior to the entry of General Order No. 99-15, Respondent took the following steps intended to effect the "public notice" prescribed by Title 28, U.S.C., Section 2071(b): (a) posting the proposed amendments on Respondent's Internet web site, and (b) posting in Arizona federal courthouses notices of public hearings regarding the proposed amendments. (*See,* App., *infra,* 22a n.7.) Respondent court has conceded that it "... initiated no other dissemination of the Notice." (*See,* S/R 5.)

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[1] More than 29.8% of all attorneys licensed to practice in Respondent court were thus disbarred. This Court may take judicial notice that, according to the official website of the State Bar of Arizona, the State Bar of Arizona had only 16,000 members, *in toto,* as of 19 May 2000. (*See, ex rel.,* http://www.azbar.org/StateBarInfo/bog/minutes/bog_0005.asp) Even assuming every member of the State Bar of Arizona were also a member of the bar of Respondent court, there could have been no more than 22,796 (*i.e.*, 6,796 + 16,000 = 22,796) members of the bar of Respondent court before the 6,796 affected attorneys were disbarred by operation of General Order 99-15. (6,796 ÷ 22,796 = 0.2981.)

Importantly, the undisputed evidence establishes: (a) the clerk of Respondent court was at all times in possession of Petitioner's current mailing address in California; (b) Petitioner was never afforded notice by mail of the proposed amendments to Local Rule 1.5(a); and (c) Petitioner did not receive actual notice of the amendment to Local Rule 1.5(a) until May of 2000 (*i.e.*, eight months ***subsequent*** to the effective date of amendment at issue).

In May of 2000, acting as counsel of record for a number of elderly victims of the Baptist Foundation of Arizona Ponzi scheme, Petitioner commenced a civil action (the "Underlying Action") in Respondent court.[2] Immediately prior to the filing of the initial complaint in the Underlying Action, Petitioner reviewed the local rules of Respondent Court. It was during the course of such pre-filing rules review that Petitioner first acquired actual knowledge of the September, 1999 amendment to Local Rule 1.5. (*See,* App., *infra,* 30a.)

Petitioner understood that the amended Local Rule 1.5(a) was intended to impose a new requirement for ***future*** admissions to the bar of Respondent court. Petitioner did not believe the amended Local Rule 1.5(a) was intended to effect the disbarment of previously-admitted attorneys such as Petitioner, who are not members of the State Bar of Arizona. Petitioner's good-faith belief was grounded in Petitioner's knowledge that this Court has previously decreed that attorneys licensed to practice in the federal courts are life

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[2] The plaintiffs in the Underlying Action asserted, *inter alia,* various claims under the Securities and Exchange Act of 1934. Federal subject-matter jurisdiction was grounded in Title 28, U.S.C., Sections 1331, 1334(b), and 1367.

tenured officers of the court.

In reliance upon his good-faith belief that he remained licensed to practice in Respondent court, Petitioner participated in the filing of the initial complaint in the Underlying Action, and commenced service as co-counsel for the plaintiffs therein.

On or about 1 September 2000, the clerk of Respondent court transmitted a letter (the "Clerk's Letter") to Petitioner which informed Petitioner: "... you have not been admitted to practice in this Court." (*See,* App., *infra,* 3a.) Note that the Clerk's Letter did not expressly assert that General Order 99-15 (amending Local Rule 1.5(a)) had operated to disbar Petitioner. Nothing in the Clerk's Letter even acknowledged that Respondent had, in fact, been admitted to the bar of Respondent court.[3]

The Clerk's Letter warned Petitioner that he would be "removed as counsel of record", and "subject to sanctions" unless he filed an application for admission *pro hac vice* within thirty days.

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[3] Reminiscent of George Orwell's *1984,* it is as though all records of Petitioner's membership in the bar of Respondent court have been completely eradicated. (Petitioner remains in possession of his original certificate of admission.) This Court may take judicial notice that the official website of Respondent court purportedly posts the names of "... ***all*** attorneys admitted since 1960 ..." [emphasis added], viewable by "status" as: (a) "Active", (b) "Disbarred", (c) "Inactive", (d) "Suspended", or (e) "U.S. Attorney". (*See, ex rel.,* http://www.azd.uscourts.gov/azd/attorneys.nsf/Attorneys+Admitted+to+Practice+-+by+Status?openview&count=2000) ***Petitioner is not listed among <u>any</u> of these categories.***

In order to protect the interests of his ***clients*** in the Underlying Action, Petitioner promptly filed in the Underlying Action an *Ex Parte* Application for Order Clarifying Status of Counsel, or, Alternatively, for Order *Nunc Pro Tunc* Granting Admission *Pro Hac Vice* (the "*Ex Parte* Application"). (*See*, App., *infra*, 3a.)

In his *Ex Parte* Application, Petitioner argued that the amendment to Local Rule 1.5(a) could not have been intended to disbar attorneys who had previously been admitted, or, alternatively, that prior decisions of this Court – which establish that members of federal bars hold office during good behavior – would preclude application of the amendment to previously-licensed attorneys. Petitioner also argued that he had been entitled to prior notice by U.S. mail, pursuant to *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Importantly, the *Ex Parte* Application sought the following relief:

> "WHEREFORE, Applicant respectfully requests that this Court enter an order determining and declaring that the Applicant remains a member of the Bar of this Court, and directing the Clerk of this Court to restore Applicant's name to the roll of attorneys admitted to practice herein;
>
> "*ALTERNATIVELY*, Applicant respectfully requests that this Court deem the instant Application to be an Application for Admission *Pro Hac Vice, Nunc Pro Tunc* and

> effective as of the date Applicant first appeared in this action, and that this Court deem such Application to be made without waiver of Applicant's claim that he remains in all respects a member of the Bar of this Court.[]"

(*See, Ex Parte* Application, at E/R 7, lines 13-19.)

On 2 October 2000, the district court entered an order (the "Collateral Order") denying the *Ex Parte* Application; however, the district court did permit Petitioner to appear *pro hac vice* in the Underlying Action. (*See,* App., *infra,* 3a.)

Petitioner elected to await entry of final judgment in the Underlying Action, prior to seeking appellate review of the Collateral Order. (*See,* App., *infra,* 3a.) Established Ninth Circuit precedent permits a party aggrieved by a collateral order to elect between immediate appeal, and appeal following entry of final judgment. (*See,* App., *infra,* 4a-5a.)

The court of appeals did not question the timeliness of Petitioner's appeal. (*See,* App., *infra,* 4a-5a.) However, the court of appeals construed the *Ex Parte* Application as an application ***for admission to the bar*** of Respondent court (a construction with which Petitioner strongly disagrees). (*See,* App., *infra,* 7a-8a.)

Under established Ninth Circuit precedent, an application for admission to the bar of a district court is not subject to review on appeal. (*See,* App., *infra,* 8a.) Finding appellate jurisdiction to be lacking, the court of appeal reviewed the merits of the Collateral Order ***for clear error*** under Title 28,

U.S.C., Section 1651(a). (*See*, App., *infra*, 11a.)

The court of appeal correctly observed that the effect of General Order 99-15 (amending Local Rule 1.5(a)) was to "... divest[] an attorney of his license to practice ..." (*See*, App., *infra*, 13a.) However, the court of appeal declined to characterize such divestiture as a "disbarment". (*See*, App., *infra*, 13a.) Instead, the court of appeal characterized the effect of General Order 99-15 as merely causing Petitioner's law license to become "expired". (*See*, App., *infra*, 24a.)

The court of appeal characterized the Collateral Order as merely, "... affirm[ing] that [Petitioner] was no longer eligible for 'continuing membership' in the bar ..." (*See*, App., *infra*, 11a.)

The court of appeal correctly held that Petitioner's law license "... constitute[d] an entitlement subject to constitutional protection." (*See*, App., *infra*, 14a.) However, the court of appeal characterized the amended Local Rule 1.5(a) as "... a retroactive licensing scheme not affecting fundamental rights ..." (*See*, App., *infra*, 14a.) The court of appeal thus held that it would pass scrutiny even if it bore only a "... rational relationship to a legitimate state interest." (*See*, App., *infra*, 14a.) The exact inquiry conducted by the court of appeal was whether there was "... any *conceivable* justification[] ..." for General Order 99-15. (*See*, App., *infra*, 18a n.6; *see also*, App., *infra*, 16a.)[4]

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[4] In determining the level of scrutiny which it would apply, the court of appeal drew from both: (a) cases involving requirements for ***initial admissions*** to a bar, and (b) cases involving retroactive application of ***economic legislation***. (*See*, App., *infra*, 14a-

The court of appeal also found that Petitioner (and the other 6,795 affected attorneys) had received adequate notice and an opportunity to be heard prior to the issuance of General Order 99-15. The court of appeal first reasoned that, because the "... effect of the law [*sic*] is to revoke a general class of licenses ...", the issuance of General Order 99-15 was "purely legislative" (as opposed to adjudicative). The court of appeal thus found that neither Petitioner, nor the other 6,795 affected attorneys, was entitled to notice comporting with the requirements of *Mullane, supra.* (*See,* App., *infra,* 19a-23a.)[5] However, the court of appeal also found it noteworthy that Petitioner "... had access to the requisite information ..." because, *inter alia,* "[t]he amended rules were apparently posted on the District Court's website." (*See,* App., *infra,* 22a n.7.)

REASONS FOR GRANTING THE PETITION

From 1789, this Court has stood as a bulwark between citizens and tyranny. So much is this Court the crown jewel of the Republic that it would be difficult to identify one particular moment as this Court's finest hour. One prime candidate would be 4 June 1962. On that day, this Court

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16a.)

[5] Respondent had asserted to the court of appeal that "... the issuance of separate notices to all affected attorneys would [have] pose[d] an unreasonable administrative hardship on [the clerk of Respondent court]." (See, S/R 1.) This Court has previously rejected such reasoning: "Exceptions in the name of necessity do not sweep away the rule that within the limits of practicality notice must be such as is reasonably calculated to reach interested parties." *Mullane, supra,* 339 U.S. at 318.

granted Mr. Clarence Earl Gideon's petition for a writ of certiorari. (*See, Gideon v. Cochran,* 370 U.S. 908 (1962).) Legend has it that Mr. Gideon had written his petition in his jail cell, and that he had submitted it to this Court in handwritten form. Mr. Gideon had asserted to a trial judge: "The United States Supreme Court says I am entitled to be represented by Counsel." *Gideon v. Wcinwright,* 372 U.S. 335, 337 (1963). The Supreme Court of Florida had denied his handwritten petition for *habeas corpus. Gideon v. Wainwright,* 372 U.S. at 337 n.1. This Court granted his petition.

Promptly upon granting Mr. Gideon's petition, this Court ***appointed counsel*** to represent him. *Gideon v. Wainwright,* 372 U.S. at 338. On the merits, this Court held the Sixth Amendment right to counsel to be a fundamental right incorporated into the Due Process Clause of the Fourteenth Amendment. *Gideon v. Wainwright,* 372 U.S. at 341-345.

Few Americans alive today could imagine an America in which indigent defendants were prosecuted to judgment without the benefit of counsel.

The importance of the effective assistance of counsel cannot be overstated.

In our judicial system, there are certain fundamental safeguards in place which are designed ensure the fairness of our judicial ***system.*** These include: (a) the life tenure of the federal bar, and (b) the right to prior notice and a meaningful opportunity to be heard. This case involves very serious threats to both fundamental safeguards.

I. LIFE TENURE OF THE FEDERAL BAR

One of the most important provisions of our Constitution is the provision of Article III to the effect that "[t]he judicial Power of the United States ... [may only be exercised by officers who] hold their Offices during good Behavior ..." (*See,* U.S. Const., Art. III, § 1.) The Framers did not confer life tenure upon the judiciary because they believed its members would somehow be deserving of privilege. The Framers held in low esteem the very concept of an aristocracy, and had no intention to create one. The Framers conferred life tenure upon the judiciary because they recognized that an ***independent judiciary*** would be *sine qua non* to a fair judicial ***system.*** (The reasons for this are so obvious that they need not be enumerated herein.) In other words, the privilege and immunity of life tenure were not conferred upon the judiciary for the benefit of its members, but instead for the ultimate benefit of the citizens who would come before them as litigants.

Attorneys are no more deserving of special privileges than are judges. However, just as an independent judiciary is essential to a fair judicial system, it is essential to the fairness of our judicial system that members of the bar, as officers of the court, enjoy certain protections. Accordingly, this Court has decreed that attorneys, like judges, enjoy life tenure.

> "[Attorneys are] ... officers of the court ... [who] 'hold their office during good behavior, and can only be deprived of it for misconduct ...'."

Ex Parte Robinson, 86 U.S. 505, 512 (1873), *quoting, Ex*

Parte Garland, 71 U.S. 333, 378 (1866). Members of the bar enjoy life tenure because attorneys who serve at the pleasure of the judiciary cannot provide effective representation to their clients. *A fortiori*, our judicial ***system*** could not be fair if attorneys served at the pleasure of the judiciary.

As this Court has written:

> "The profession of an attorney and counsellor is not like an office created by an act of Congress, which depends for its continuance, its powers, and its emoluments upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counsellors ... are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character. ... The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. ***They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded.*** [] Their admission or their exclusion is ... the exercise of judicial power ...
>
> . . .

> "The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, ***does not hold it as a matter of grace and favor.*** The ***right*** which it confers upon him to appear for suitors, and to argue causes, ***is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.***"

Garland, supra, 71 U.S. at 378-379. (Emphasis added.) Notably, by decreeing that an attorney may not even be deprived of his or her office "... at the command of the legislature ...", this Court foreclosed any argument that a "purely legislative" (as opposed to adjudicative) governmental act could divest an attorney of his or her license in the absence of misconduct or unfitness proven upon full due process.[6]

Given the apparent strength of the precedent set by this Court in *Robinson* and *Garland,* it is not surprising that, as the court of appeal correctly noted:

> "... no jurisdiction has [previously] enacted a requirement that divests an attorney of his license to practice, which is the effect of the

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[6] The petitioner in *Garland* successfully challenged: (a) an Act of Congress which had terminated the law licenses of thousands of attorneys, and (b) an amendment to a Supreme Court Rule which had been adopted to implement that Act. *See, Garland, supra,* 71 U.S. at 374-375.

provision in this case."

(*See*, App., *infra*, 13a.) However, this Court should be aware that there is a disturbing trend among some lower courts to erode the protections of *Robinson* and *Garland*. The court of appeals in this case characterized the Seventh Circuit decision in *Brown v. McGarr*, 774 F.2d 777 (7th Cir. 1985) as holding that a district court may "... revoke[] the licenses of lawyers who did not have the requisite level of experience ..." according to criteria prescribed ***subsequent*** to their admission to the bar. (*See*, App., *infra*, 21a.)

Other courts have recently promulgated general orders which purport to prescribe the ***expiration*** of federal law licenses. This Court may take judicial notice that, on 22 January 2001, the United States Court of Appeals for the ***Fifth*** Circuit issued a general order which prescribes "... a five year term limitation on existing and initial membership in [that] court's bar and establishe[s] a readmission fee." Said order prescribes that members of the bar of that court "... must apply for readmission ... [every] five years ...", and pay a fee "... for each new five year period of bar membership."[7]

The U.S. District Court for the Southern District of Texas has recently begun to require that members of its bar submit a

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[7] As far as Petitioner has been able to determine, the Fifth Circuit's order of 22 January 2001 bears neither a title, nor an identifying number. Petitioner first became aware of it when Petitioner received an invoice for the "readmission fee". Ms. Majella Sutton, the Fifth Circuit's attorney admissions clerk, most graciously guided Petitioner in his efforts to locate the order of 22 January 2001 on the Fifth Circuit's official website. Ms. Sutton may be reached at (504) 310-7793.

periodic, "Renewal Questionnaire for Admission to Practice," although that district does not ***yet*** require a renewal fee.[8]

The apparently-emerging view among some federal courts that federal law licenses can "expire" poses an imminent threat to this Court's holdings in *Robinson* and *Garland.* This Court should grant the instant Petition to address the conflicts between the decision of the court of appeal in this case, and the decisions of this Court in *Robinson* and *Garland.*

II. REQUIREMENT OF MEMBERSHIP IN THE BAR OF THE FORUM STATE

The foregoing discussion implicitly assumes that a district court may require membership in the bar of its forum state as a condition to a ***new*** admission to its own bar. This assumption will now be examined.

Petitioner believes it was not until the latter decades of the last century that some district courts began to require membership in their forum state's bar as a prerequisite to admission to their own bar. Numerous district courts currently impose such a requirement; in fact, the court of appeal speculated that the "majority" of federal districts impose such a requirement. (*See,* App., *infra,* 13a.) The Ninth Circuit has upheld such requirements. *See, Giannini v. Real,* 911 F.2d 354 (9th Cir. 1990).

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[8] Petitioner first became aware of the "Renewal Questionnaire for Admission to Practice" when Petitioner received notice by mail. This Court may take judicial notice of the requirement. (*See, ex rel.:*
http://www.txs.uscourts.gov/atyadm/renewappinfo.htm)

Petitioner's research has revealed no decision by this Court which addresses the question whether a district court may require membership in its forum state's bar as a prerequisite to admission to its own bar. This Court anticipated that question in *Frazier v. Heebe*, 482 U.S. 641, 646 n.5 (1987), but the issue was not presented for decision in that case. It is noteworthy that this Court has previously held that, where forum-state bar membership had been required for admission to a federal bar, that requirement is:

> "... ***exhausted*** upon admission to [the federal bar] which [the state bar membership] has served to secure ... [such that "loss" of the state law license] ... by any ... cause not involving unworthiness [*i.e.*, misconduct], ... would be wholly negligible upon the right to continue to be a member of the [federal] bar ..."

Snelling v. Radford, 243 U.S. 46, 49 (1917). (Emphasis added.) *Cf.: Frazier v. Heebe*, 482 U.S. at 647 n.7. ("[D]isqualification from membership from a state bar does not necessarily lead to disqualification from a federal bar." [Citations omitted.])

The question whether a district court may require membership in its forum state's bar as a prerequisite to admission to its own bar is an important question of federal law that has not been, but should be, settled by this Court.

The policy issues on both sides of this question are of great importance, both to the federal bench and to the federal bar. Requiring membership in the forum state's bar may have the effect of ensuring some base level of familiarity with the

substantive law of the forum state; however, such familiarity could only be relevant in diversity cases. Further, federal courts are regularly called upon to apply the substantive law of a state ***other than*** their forum state, and local attorneys are often called upon to litigate under the substantive law of a sister state.

Requiring membership in the forum state's bar often deprives litigants of their choice of counsel. Such requirements have the effect of Balkanizing the practice of law, and preventing the most skilled practitioners in the nation from reaching the cases for which they are best suited (and in which they are most needed). *Cf.: Frazier v. Heebe*, 482 U.S. at 650 n.12. ("A client may have a number of excellent reasons to select a nonlocal lawyer ...") This is especially applicable to those areas where national practice is most appropriate, *e.g.*, protection of defrauded investors, criminal defense, civil rights. As this Court has noted:

> "There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries."

Frazier v. Heebe, 482 U.S. at 647 n.7.

While it may be true that most federal districts permit admission *pro hac vice*, an admission held "... as a matter of grace and favor ..." (*Garland*, 71 U.S. at 379) is by no means the equivalent of a license. Admission *pro hac vice* "... does not allow the nonresident attorney to practice on the same terms as a resident member of the bar." *Frazier v. Heebe*, 482

U.S. at 650. (Citation and internal quotation marks omitted.) The potential for discretionary admission *pro hac vice* is "... not a freely available alternative." *Ibid.*, 482 U.S. at 651 n.13. Indeed, the very purpose of life tenure of the federal bar is to ensure that counsel cannot be intimidated from taking unpopular cases, representing unpopular people, or serving as zealous advocates – even in fora in which the character of the litigation, or even the litigants, may be received with hostility. *Cf.: Frazier v. Heebe*, 482 U.S. at 650 n.12. (Acknowledging the necessity that "nonlocal" counsel be available to champion the "... unpopular cause with which local lawyers are reluctant to be associated.") While public interest attorneys with national practices are perhaps the best example of a class of attorneys in need of the independence guaranteed by a law ***license***, they are but one among many.

III. NOTICE TO BE AFFORDED PRIOR TO DISBARMENT / TERMINATION / REVOCATION / EXPIRATION

The court of appeal obliquely conceded that Petitioner had a "... legitimate property interest ..." in his license to practice before Respondent court. (*See*, App., *infra*, 14a.) Petitioner's research has revealed no decision of this Court which ***expressly*** holds that an attorney has a property interest in his or her federal license to practice law. *Cf.: Barry v. Barchi*, 443 U.S. 55, 64 (1979) (holding that the holder of a license to train horses had "... a property interest in his license sufficient to invoke the protection of the Due Process Clause.") However, this Court ***has*** held that, prior to entry of any order effecting disbarment, an attorney must be afforded the same due process rights of notice and an opportunity to be heard which must be afforded a litigant prior to deprivation of

a property interest:

> "Before a judgment disbarring an attorney is rendered he [or she] should have ***notice*** of the grounds of complaint against him [or her] and ample ***opportunity of explanation and defence.*** This is a rule of natural justice, and should be equally followed when proceedings are taken to deprive him [or her] of his [or her] right to practice his [or her] profession, as when they are taken to reach his [or her] real or personal ***property.***"

Robinson, supra, 86 U.S. at 512. (Emphasis added.) An attorney is entitled to "... fair notice as to the ***reach*** of the [proceedings resulting in disbarment] and [also of] the ***precise nature of the charges.***" *Matter of: Ruffalo,* 390 U.S. 544, 552 (1968). (Emphasis added.)

With regard to the ***manner*** of giving notice, this Court has held that notice by ordinary U.S. Mail is the ***minimum*** notice required to satisfy due process (where, as here, the mailing address of the person to be affected is readily ascertainable). *Mullane, supra,* 339 U.S. at 318. In the case at bar, the court of appeal conceded:

> "In most cases an individual would be entitled to individual notice and an opportunity to be heard before retroactive extinguishment of his or her vested property interest. Justice Scalia has commented that the 'central' distinction between rule-making and adjudication is that rules have legal consequences 'only for the

> future'. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216-217 (1988). (Scalia, J., concurring)."

(*See,* App., *infra,* 23a.) However, the court of appeals found this case to present a "unique situation". (*See,* App., *infra,* 23a.) In its view, the 6,796 affected members of Respondent court's bar were "... unnamed and unspecified persons ..."; it viewed this case as one regarding "... the regulation of attorney ***admissions*** [*sic*] ..." (*See,* App., *infra,* 23a. [Emphasis added.]) Petitioner strongly disagrees that the 6,796 affected members of Respondent court's bar qualify as "... unnamed and unspecified persons ..." Petitioner would also draw a distinction between the power to regulate attorney ***admissions,*** and the power to terminate a license to practice law.

In the case at bar, notice by mail was **not** provided. However, it is questionable whether even notice by mail of the proposed adoption of General Rule 99-15 would have been sufficient, insofar as the text of the amended Local Rule 1.5(a) is susceptible of more than one meaning, and insofar as the attorneys who would have received such notice (if it had been given) would presumably be aware that district court rules must be "consistent with" rules prescribed under Title 28, U.S.C., Section 2072, and thus may not "... abridge ... any substantive right." (*See,* Title 28, U.S.C., Sections 2071(a), 2072(b).)

The precise question on the merits would be whether the "public notice" (*see,* Title 28, U.S.C., Section 2071(b)) issued prior to the entry of General Order 99-15 – as supplemented by posting on Respondent court's Internet website – met the

requirements of due process. It is hardly disputable that the posting of notices in Arizona federal courthouses was not "... reasonably calculated, under all the circumstances, to apprise ..." members of the federal bar who are ***not*** members of the State Bar of Arizona that General Order 99-15 had been proposed. *Cf.: Mullane, supra,* 339 U.S. at 314.

Prior to the Internet's achievement of ubiquity,[9] it was settled that where, as here, Petitioner's address was known to Respondent court, "[p]ersonal service or mailed notice [was] required ..." to satisfy due process. *Mennonite Board of Missions v. Adams,* 462 U.S. 791, 799 (1983). While the concept of notice by mail is as old as the Constitution (*see,* U.S. Const., Art. I, § 8), the concept of posting notice on the Internet is so new that its relationship, if any, to *Mullane* has yet to be addressed by this Court. The court of appeal apparently viewed such posting as relevant to its analysis, mentioning it at least three times. (*See,* App., *infra,* 22a n.7, 29a, 30a.) Petitioner believes this Court should hold that posting on the Internet is exactly analogous to either newspaper publication of notice, or notice by posting in public places. It is well established that such forms of notice do not satisfy *Mullane* where the address of the affected party is known or readily ascertainable. *See, Mennonite Board of Missions, supra,* 462 U.S. at 797.

The question whether Petitioner (and the other 6,795 similarly-situated attorneys) were entitled to *Mullane*-compliant notice prior to the entry of General Order 99-15, and the related question whether the posting of notice on

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[9] *See, Ashcroft v. American Civil Liberties Union,* 535 U.S. 564, 567 n.2 (2002).

Respondent court's Internet web site may satisfy, in whole or in part, the notice requirements of *Mullane,* are important questions of federal law which have not been, but should be, settled by this Court. Alternatively, as to the former question, to the extent this Court may find that the decision of the court of appeal in this case conflicts with the decisions of this Court in *Mullane* and *Mennonite Board of Missions,* this Court should grant the instant Petition to address those conflicts.

IV. INHERENT SUPERVISORY POWER

This Court's decision in *Frazier v. Heebe, supra,* confirms this Court's "... inherent supervisory power ..." to invalidate local rules of court to advance "... the principles of right and justice." *Frazier v. Heebe,* 482 U.S. at 645. *A fortiori,* this Court need not address any constitutional issue (*i.e.*, need not find any constitutional infirmity) in order to implement its prior precedents as discussed herein.

This Court may, and should, exercise its inherent supervisory power to reinstate the law licenses of the 6,796 attorneys who were disbarred by Respondent court's General Order 99-15.

In fact, this Court may well determine that it can do so without granting full review. If this Court simply cannot find a place on its docket to grant full review of this case, this Court has the option to effect a summary disposition on the merits. Such a summary disposition may, if this Court deems it appropriate, leave Respondent court free to apply Local Rule 1.5(a) prospectively to new admissions.

CONCLUSION

The instant Petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 2004

APPENDIX A

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 01-17332

DAVID J. GALLO, Movant-Appellant,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,
Real Party in Interest-Appellee.

Argued and Submitted Dec. 5, 2002.
Submission Vacated Dec. 9, 2003.
Resubmitted Nov. 19, 2003.
Filed Nov. 19, 2003.

Before: BRUNETTI and TASHIMA, Circuit Judges, and EZRA, [FN*] District Judge.

FN* The Honorable David Alan Ezra, Chief United States District Judge for the District of Hawai'i, sitting by designation.

OPINION

EZRA, District Judge.

Movant-Appellant David J. Gallo ("Gallo") appeals from the District Court's order that pursuant to an amendment to Rule 1.5 of the Local Rules of the United States District Court for the District of Arizona ("Rule 1.5"), Gallo no longer may appear before the District of Arizona without successful completion of a *pro hac vice* application.[1] In his appeal, he argues that the rule is unconstitutional and that the District Court erred in concluding that Gallo had received sufficient notice of the applicability of the amendment to him and that the Ninth Circuit should exercise its supervisory power to direct the District Court to apply Rule 1.5(a) prospectively.

BACKGROUND

Gallo was admitted to the Bar of the United States District Court for the District of Arizona (the "District Court") on July 28, 1995, under Local Rule 1.5, which allowed non-resident attorneys to gain admission based on their admission to the bar of *any* United States District Court. In September 1999, the District Court amended Local Rule 1.5 to state: "Admission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona." United States District Court For

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[1] Admission *pro hac vice* refers to an attorney who is admitted temporarily to practice in a jurisdiction for the purpose of participating in a particular case. BLACK'S LAW DICTIONARY 1227 (7th ed.1999).

the District of Arizona, Local Rules 1.5(a) (2003).

On May 8, 2000, Gallo participated in the filing of *Bartlett v. Arthur Andersen,* CIV 00-852-PHX-SMM, in the District Court of Arizona and served as Plaintiffs' co-counsel of record. On September 1, 2000, Gallo received a letter, dated August 30, 2000, from the Attorney Admissions Clerk of the District Court in which he was informed that he was no longer admitted to appear generally before the District Court of Arizona. Specifically, the letter stated: "Your name has appeared on pleadings filed with this court; however a review of our files indicates that you have not been admitted to practice in this Court." The letter gave Gallo until September 29, 2000, to apply for admission *pro hac vice* to avoid being removed as counsel of record.

On September 25, 2000, Gallo filed an *Ex Parte* Application for Order Clarifying Status of Counsel, or, Alternatively, for Order *Nunc Pro Tunc* Granting Admission *Pro Hac Vice* ("*Ex Parte* Application"). On October 2, 2000, the District Court filed an Order in which it denied Gallo's *Ex Parte* Application and allowed Gallo to appear in the District Court *pro hac vice. See* Order, filed October 2, 2000 ("October 2, 2000 Order"). Gallo paid the twenty-five dollar fee and was admitted to appear in the action *pro hac vice.* Final judgment in the *Bartlett* case was entered on September 17, 2001, and on October 12, 2001, Gallo filed his Notice of Appeal.[2] We

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[2] In the underlying action, we affirmed in part and dismissed in part, finding that the investors had failed to plead their securities fraud claims with sufficient particularity. *See Bartlett v. Andersen,* 55 Fed.Appx. 819 (9th Cir.2003).

vacated and deferred submission so that we could receive briefing from the District Court, the Real Party in Interest-Appellee. The State Bar of Arizona also submitted an Amicus Brief.

JURISDICTION

1. Appellate Jurisdiction Under 28 U.S.C. § 1291

Gallo's case is currently before us despite the fact that Gallo did not commence an official action in the District Court regarding the effect of the new Local Rules on his ability to appear before the District Court. Rather, as part of the proceedings involved in his representation of the Plaintiffs in *Bartlett,* Gallo requested the District Court to review the August 30, 2000 letter informing him that he was not admitted to practice in the District Court. In his *Ex Parte* Application, he sought the District Court's reconsideration of the decision to apply the amended Local Rules to him.

Gallo argues that the District Court's October 2, 2000 Order denying his *Ex Parte* Application was an interlocutory order and that pursuant to the applicable case law in the Ninth Circuit, his present appeal of that order is properly before us. Specifically, Gallo argues that jurisdiction exists because the interlocutory order constituted a "collateral order" that was immediately appealable. In support of this proposition, he cites *Estate of Bishop By and Through Bishop v. Bechtel Power Corporation,* 905 F.2d 1272, 1274 (9th Cir.1990) (finding that "[f]or the doctrine to apply, the challenged order must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits

of the underlying action; and (3) be effectively unreviewable from a final judgment").

In accordance with *Bishop,* Gallo argues that the October 2, 2000 Order provided a conclusive determination regarding his admission status, which was an issue unrelated to the Plaintiffs' claims in the underlying *Bartlett* action. Gallo also asserts that the Order was unreviewable from the final judgment in the *Bartlett* case. *Id.* (citing *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 468, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978)) (affirming that "the purpose of the finality requirement is to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results") (internal quotation marks and citation omitted).

Finally, Gallo asserts that even though he did not appeal the "collateral order" immediately, we still have jurisdiction to review the District Court's decision because the Order merged into the final judgment in the underlying case, *Bartlett,* which was entered on September 17, 2001. *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper,* 254 F.3d 882, 889 n. 1 (9th Cir.2001) (citing *Hook v. Arizona Department of Corrections,* 107 F.3d 1397, 1401 (9th Cir.1997)) (finding that if a party does not appeal an interlocutory order when it becomes immediately appealable, the party still has the right to appeal the interlocutory order after entry of the final judgment because the interlocutory order merges into the final judgment and may be challenged in an appeal from that judgment). Thus, Gallo contends that his Notice of Appeal was properly and timely filed on October 12, 2001, and that we have jurisdiction to review the District Court's decision.

The District Court responds by arguing that as a matter of law, the District Court's October 2, 2000 Order prohibiting Gallo from practicing generally before it cannot be reviewed upon appeal. *In re Wasserman*, 240 F.2d 213, 214 (9th Cir.1956). The District Court argues that pursuant to *Wasserman* this court lacks jurisdiction to review an order denying a petition for admission to practice before a United States District Court. In *Wasserman*, we found that the Southern District of California's order barring Wasserman from appearing before it was not a final decision and therefore it was unappealable. Wasserman had never been admitted to the bar of the Southern District of California and thus the case focused on the laws governing applications for admission to the bar.

Gallo argues that his case is distinguishable because he had already obtained admission to practice before the District Court. He asserts that he is not requesting reconsideration of a denial of a motion for admission based on a "[f]ailure or refusal to act favorably upon such an application." *Wasserman*, 240 F.2d at 214 n. 1 (internal quotation marks and citations omitted). Rather, he claims he is seeking redress for an improper disbarment. In light of the fact that Gallo previously had been admitted to practice before the District Court, his situation may not qualify as a run of the mill application. And, as discussed below, there are constitutional dimensions to Gallo's situation.

As the District Court stated in its October 2, 2000 Order, however, under the Local Rules in effect at the time Gallo sought to practice before the District Court, he no longer met the eligibility requirements for "continuing membership," which required membership in the State Bar of Arizona.

Moreover, unlike some other districts who have revised their respective local rules governing admission, these Local Rules do not include a grandfather clause. *See, e.g.*, Local Rules of Practice for the United States District Court for the District of Hawai'i, Local Rule 83.1(b) (2002) ("After October 1, 1997, an applicant for admission to membership in the bar of this court must be an attorney who is a member in good standing of the bar of the State of Hawai'i."); Local Rules for the United States District Court for the Northern District of California, Local Rule 11-1(b) ("After the effective date of these rules [Jan. 1, 2001] an applicant for admission to membership in the bar of this Court must be an attorney who is an active member in good standing of the State Bar of California."). Thus, Gallo no longer met the requirements for membership in the bar of the District Court. As discussed below, even if Gallo had a property interest in his membership, the District Court had a legitimate reason for altering the local rules governing admission such that its amendment passes the rational basis test. Accordingly, under either analysis, his *Ex Parte* Application was necessarily an application for admission.

Consistent with its interpretation of *Wasserman*, the District Court also argues that Gallo's reliance on *Estate of Bishop* is misplaced. It correctly points out that in *Estate of Bishop* the issue before this court was whether an order denying a motion to remand to state court was an appealable order. Despite the detailed analysis of the collateral order exception, the District Court argues that *Estate of Bishop* nevertheless precludes a finding that Gallo's appeal is reviewable because such review is "confined to whether the federal[district] court would have had jurisdiction had the case been filed in federal court in the posture it had at the time of the entry of final judgment."

Estate of Bishop, 905 F.2d at 1275 (internal quotation marks and citations omitted). The District Court argues that because *Wasserman* precludes finding jurisdiction over the substance of Gallo's appeal, Gallo's reliance on *Estate of Bishop* is unavailing.[3]

Upon consideration of the District Court's arguments under *Wasserman* and *Estate of Bishop*, we agree that appellate jurisdiction to review an order by the District Court denying admission to practice generally before it is lacking. Irrespective of whether the October 2, 2000 Order constitutes an interlocutory order on appeal, it is nonetheless an order issued by the District Court denying Gallo's request for a waiver from the Local Rules in effect at the time he submitted filings on behalf of his clients. As this Circuit and other Circuits have found, the denial of a petition for admission to a district court bar is neither a final order appealable under 28 U.S.C. § 1291 ("Section 1291") nor an interlocutory order appealable under 28 U.S.C. § 1292. *Wasserman*, 240 F.2d at 214-16. Accordingly, we do not have appellate jurisdiction to review the denial of Gallo's *Ex Parte* Application to appear before the District Court.

In his Opening Brief and Reply, Gallo attempts to distinguish this precedent by characterizing both the initial letter sent to him on August 30, 2000, and the October 2, 2000 Order as a disbarment action, rather than a denial of an application for admission. Accordingly, he argues that such action is inappropriate in the absence of any findings of misconduct or

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[3] The District Court also notes that the holding in *Hook* only applies *if* the October 2, 2000 Order is appealable, which it contends it is not.

unfitness, the only grounds, he asserts, upon which an attorney who has been admitted to a bar may lose his or her license. As stated above, we recognize that Gallo's situation differs somewhat from the situation in *Wasserman* because he previously was licensed to appear generally before the court. However, we disagree that the District Court's action constitutes a disbarment. Gallo's *Ex Parte* Application was a petition to the District Court for a waiver of Rule 1.5, or, alternatively, permission to proceed *pro hac vice*. The application constituted a request to practice before the court despite the existing laws proscribing such appearances. As discussed, *infra*, the amended law is constitutional on its face and as applied by the District Court to Gallo's situation.

As recognized by Gallo, disbarment proceedings generally involve an ethical violation sufficient to prevent an attorney from appearing in any capacity before the District Court. All parties concede that the decision to enforce the amended version of the Local Rules was not based on any character determination or other ethical considerations. To the contrary, Gallo was granted *pro hac vice* admission. Thus, the District Court's Order is aptly characterized as a denial of Gallo's application for a waiver of the Local Rules as otherwise applicable to him. Accordingly, the law established in *Wasserman* applies such that the District Court's October 2, 2002 Order is neither final nor appealable and jurisdiction under Section 1291 does not exist.

2. Petition for Writ of Mandamus Under 28 U.S.C. § 1651(a)

Alternatively, Gallo argues that this court should treat his October 12, 2001 Notice of Appeal as a petition for writ of

mandamus. In the absence of appellate jurisdiction pursuant to 28 U.S.C. §§ 1291-1292, jurisdiction may exist under 28 U.S.C. § 1651(a). *See Miller v. Gammie*, 335 F.3d 889, 895 (9th Cir.2003) (en banc) (treating notice of appeal where appellate jurisdiction was lacking as a petition for a writ of mandamus); 28 U.S.C. § 1651(a) (2000) ("[A]ll courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). To determine whether to issue a writ of mandamus, we must consider the following five factors:

(1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires.
(2) The petitioner will be damaged or prejudiced in a way not correctable on appeal.
(3) The district court's order is clearly erroneous as a matter of law.
(4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
(5) The district court's order raises new and important problems, or issues of law of first impression.

Allen v. Old Nat'l Bank (In re Allen), 896 F.2d 416, 419-420 (9th Cir.1990) (citing *Bauman v. United States Dist. Court*, 557 F.2d 650, 654-55 (9th Cir.1977)).

The District Court argues that the third factor is dispositive in this case such that our review of the District Court's Order for clear error will determine whether we should issue a writ of mandamus. Indeed, it is well established in this Circuit that "[w]hen a district court's decision is correct as a matter of law, a writ of mandamus should be denied." *In Re Allen*, 896 F.2d at 420 (citing *Rosenfeld v. United States*, 859 F.2d 717, 723 (9th Cir.1988)); *Survival Sys. Div. of the Whittaker Corp. v.*

United States Dist. Court, 825 F.2d 1416, 1418 & n. 1 (9th Cir.1987). Accordingly, we will review the District Court's decision for clear error.

STANDARD OF REVIEW

In light of our conclusion that we do not have appellate jurisdiction over the District Court's decision to deny Gallo's request to practice generally before it, we decline to review the District Court's conclusions of law de novo. In the absence of a direct appeal, we shall treat Gallo's challenge to the District Court's Order as a petition for writ of mandamus. Accordingly, we review the District Court's October 2, 2000 Order for clear error as a matter of law. *Executive Software North America, Inc. v. United States Dist. Court,* 24 F.3d 1545, 1551-52 (9th Cir.1994).[4]

DISCUSSION

1. District Court Order

As established above, the District Court's October 2, 2000 Order did not "disbar" Gallo and all attorneys similarly situated. Instead, it affirmed that Gallo was no longer eligible for "continuing membership" in the bar of the District Court. The District Court also determined that the amended Local Rules governing admission and membership should not be waived to account for the fact that under the former version of the rules, Gallo previously had been admitted to practice

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[4] We address, *infra,* Gallo's assertion that a finding of clear error is unnecessary because we have plenary supervisory over the local rules.

generally before the District Court. It determined that pursuant to the inherent authority of federal district courts to regulate the practice of law in their forums, the amendments to the Local Rules were both constitutional on their face and as applied to Gallo's situation. The District Court declined to find that at a minimum, the amended Local Rules should be applied prospectively to recognize and preserve Gallo's previous admission and membership. The District Court also determined that Gallo had not suffered a due process violation but was granted admission to practice before the District Court of Arizona on a case-by-case basis through the avenue of *pro hac vice.*

We now review this decision for clear error and begin our analysis by considering the constitutional dimensions of Gallo's claim. Although the District Court declined to address the constitutional arguments, we believe it is necessary to conduct a thorough review of whether application of the amended Rule 1.5(a) in this case deprived Gallo of a constitutionally protected property interest in his license to practice generally before the District Court of Arizona. We nonetheless arrive at the same outcome as the District Court because we find that when analyzed under the applicable constitutional scrutiny, the District Court's amendment was rationally-related to a legitimate state interest in ensuring the fitness of lawyers who appear before it.

We then discuss the remainder of the District Court's opinion to determine whether the District Court properly applied the amended version of the Local Rules governing admission and continuing membership in the bar of the District Court. As suggested in our previous discussion regarding jurisdiction, Gallo's ability to appear before the District Court subsequent

to the amendments is governed by the laws in effect at the time of the proceeding. After discussion of this issue, we turn to the question of whether Gallo received sufficient and proper notice of the relevant changes in the Local Rules.

2. Constitutionality of Rule 1.5(a)

The amendments to the Local Rules are similar to laws adopted by the majority of federal district courts. *Zambrano v. City of Tustin,* 885 F.2d 1473, 1483 (9th Cir.1989) (holding that "[a]dmission to the state bar is the essential determinant of professional ethics and legal competence") (citing *In re Evans,* 524 F.2d 1004, 1007 (5th Cir.1975)). As we established above, we do not find that the District Court subjected Gallo to a disbarment action. However, we recognize that no jurisdiction has enacted a requirement that divests an attorney of his license to practice, which is the effect of the provision in this case. Accordingly, we must consider whether this provision has deprived Gallo of a constitutionally protected property interest.

A. Substantive Due Process

The Supreme Court has held that property interests derive not from the Constitution but from "existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Bd. of Regents of State Coll. v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of

entitlement to it." *Id.*

We have recognized in a number of contexts that an individual has a legitimate property interest in his or her professional license. *See Brown v. Smith (In re Poole)*, 222 F.3d 618, 620 (9th Cir.2000); *Sabow v. United States*, 93 F.3d 1445, 1456 (9th Cir.1996) (holding that physician has a constitutionally protected property interest in his or her medical license); *see also Barry v. Barchi*, 443 U.S. 55, 64, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979). Our case law holds that a professional license, once conferred, constitutes an entitlement subject to constitutional protection. Accordingly, it may be argued that in this case, procedural alternatives, including *pro hac vice* admission, provide an inadequate substitute for the individual's previously conferred property interest. *See Dittman v. Cal.*, 191 F.3d 1020, 1030-31 (9th Cir.1999) (holding that acupuncturist is entitled to substantive and procedural due process analysis where California required him to submit his social security number to renew his state license); *Brown v. McGarr*, 774 F.2d 777, 782 (7th Cir.1985) (holding that attorney entitled to substantive and procedural due process analysis where general order revoked licenses of trial lawyers who did not have certain level of trial experience).

Applying the well-established constitutional analysis to this case, a retroactive licensing scheme not affecting fundamental rights will pass scrutiny if the scheme bears "a rational relationship to a legitimate state interest." *See Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir.2000); *Schware v. Bd. of Bar Exam'rs of State of N.M.*, 353 U.S. 232, 239, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (stating that any qualifications to the state bar "must have a rational connection

with the applicant's fitness or capacity to practice law").[5]

We applied the rational basis standard in *Lupert v. California State Bar*, 761 F.2d 1325 (9th Cir.1985), to address California's State Bar requirement that students from unaccredited law schools pass certain examinations. We held that the requirement did not violate equal protection because it served the legitimate purpose of protecting students from pursuing a profession for which they did not qualify and aided persons in assessing the quality of training provided by the schools. *Id.* at 1328-29. We held likewise in *National Association for the Advancement of Psychoanalysis*, 228 F.3d 1043. Plaintiffs argued that California's licensing scheme violated their due process rights by prohibiting them from assuming the title "psychologist." *Id.* at 1051. We held that the licensing scheme, which contained certain educational requirements, was rationally related to California's interest in protecting the mental health and safety of California's citizens. *Id.*

From *Lupert* and *National Association for the Advancement*

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5 *See also Austin v. City of Bisbee, Ariz.*, 855 F.2d 1429, 1436 (9th Cir.1988) ("[T]he retroactive application of economic legislation meets the test of due process simply if 'retroactive application of the legislation is itself justified by a rational legislative purpose.' ") (quoting *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 104 S.Ct. 2709, 81 L.Ed.2d 601 (1984)); *Giannini v. Real*, 911 F.2d 354, 359 (9th Cir.1990) (holding that the standard of review is rational basis review because there is no fundamental right to practice law and lawyers are not a suspect class).

of Psychoanalysis emerges the long-standing rule that any "conceivable basis" will justify the constitutionality of a licensing scheme not affecting fundamental rights. *Lupert*, 761 F.2d at 1328. Federal courts have inherent and broad regulatory authority to make rules respecting the admission, practice, and discipline of attorneys in the federal courts. *Robinson*, 86 U.S. (19 Wall.) 505, 22 L.Ed. 205; *Garland*, 71 U.S. (4 Wall.) 333, 18 L.Ed. 366. Courts have specific authorization under 28 U.S.C. § 2071, which states in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress *may from time to time prescribe rules for the conduct of their business.* Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.
>
> (b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

28 U.S.C. § 2071 (emphasis added).

Historically, however, "the licensing and regulation of lawyers has been left exclusively to the states and the District of Columbia within their respective jurisdictions." *Leis v. Flynt*, 439 U.S. 438, 442, 99 S.Ct. 698, 58 L.Ed.2d 717 (1979). The states supply not only the qualifications for admission to practice and the standards of professional conduct but also the guidelines and machinery for the discipline of lawyers. *Id.* The State Bar of Arizona, under the authority and supervision of the Arizona Supreme Court, administers Arizona's system of attorney admission and regulation. Ariz. R.S.Ct. 31. The

State Bar oversees the admission of attorneys, monitors continuing legal education, and maintains the integrity of the profession. Ariz. R.S.Ct. 42, 45, 47.

In *Russell v. Hug,* 275 F.3d 812 (9th Cir.2002), we held that district courts may rely on the infrastructure provided by state bar associations in meeting their own needs for monitoring attorney admission and practice in the federal courts. The pertinent issue in *Russell* concerned the constitutionality of a general order issued by the Northern District of California that required private attorneys selected to represent indigent defendants to be members of the California State Bar. We upheld the requirement under the equal protection clause because the rule served the district court's legitimate interest "in ensuring a uniform minimum level of competence for lawyers." *Id.* at 819. We stated:

> Because there are more than fifty bar examinations in the United States, the minimum standard of competence required to be a 'lawyer' arguably varies considerably among the States. Requiring membership in the California Bar allows the Northern District of California to be sure that all attorneys ... are at least capable enough to clear the standard required in California--a standard with which the Northern District is familiar, and a standard that is quite possibly higher than that of many other states.

Id.

The *Russell* court also concluded that the Northern District's requirement that attorneys be members of the bar in "good standing" was rationally related to the federal court's legitimate interest "in policing standards of ethical conduct of the lawyers who practice law on the Indigent Panel." *Id.* at

820. We stated that "the California bar membership requirement makes discipline easier for the Northern District because the California Bar provides the Northern District with a disciplinary mechanism complementary to its own." *Id.* Finally, the court noted that the adoption of California's requirements permitted the district court to bring allegations of professional misconduct to the attention of the California State Bar. *Id.*

Rule 1.5(a) is similar to the general order at issue in *Russell.* In both cases, the local rule serves the legitimate interest of ensuring that all attorneys practicing before the courts "clear the standard required" by the respective state bar associations.[6] *Id.* at 819. In its Amicus Brief, the Arizona State Bar argues that because the District Court does not have its own administrative staff to supervise and regulate the conduct and ethics of attorneys who appear before it, it relies heavily upon the resources of the State Bar to implement these rules. Absent the Arizona State Bar's assistance in undertaking the administrative steps necessary to enforce the regulations governing attorney conduct, questions of misconduct may never properly come before the District Court.

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[6] Although the record does not indicate that the District Court amended Local Rule 1.5(a) for the explicit purpose of ensuring quality attorney representation, it is well-established that rational basis scrutiny permits the court to consider any *conceivable* justifications for enacting the law. *See Nat'l Ass'n for the Advancement of Psychoanalysis,* 228 F.3d at 1050.

Indeed, the standard for admission in both Arizona and California may well exceed that required in other states. Nonetheless, Rule 1.5(a) serves the court's legitimate interest in simplifying the disciplinary process. No longer must the District Court refer wayward lawyers to out-of-state bar associations. The amended version of Rule 1.5(a) permits the District Court to limit disciplinary referrals to the Arizona State Bar. The Arizona State Bar also provides a number of procedures that permit the District Court to file disciplinary complaints free from public exposure. If the District Court files a complaint, the Arizona State Bar brings the complaint on behalf of the District Court. The District Court is not guaranteed the same privacy when referring attorneys to other state bar associations. This special procedure provides an additional legitimate justification for amending Rule 1.5(a).

In light of this analysis, we conclude that the retroactive application of the Arizona Bar requirement does not violate Gallo's substantive due process rights because it is justified by the rational purpose of streamlining and perfecting the regulation of attorney admission in the Arizona District Court.

B. Procedural Due Process

Gallo also contends that the new licensing scheme resulted in the deprivation of his property without adequate notice and opportunity to be heard. Whether an affected party is entitled to individual notice and a pre- deprivation hearing depends upon the character of the action. When the action is purely legislative, the statute satisfies due process if the enacting body provides public notice and open hearings. *Texaco v. Short*, 454 U.S. 516, 536, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982); 28 U.S.C. § 2071(b). "[I]t has never been suggested

that each citizen must in some way be given specific notice of the impact of a new statute on his property before that law may affect his property rights." *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445, 36 S.Ct. 141, 60 L.Ed. 372 (1915) (holding that individual notice is not necessary if the government imposes a "rule of conduct [that] applies to more than a few people"); *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir.1994).

When the government action is adjudicative, however, due process requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Londoner v. Denver*, 210 U.S. 373, 385, 28 S.Ct. 708, 52 L.Ed. 1103 (1908) (finding procedural due process violated where law affected a relatively small number of persons).

Indeed, "the line between legislation and adjudication is not always easy to draw," *LC & S, Inc. v. Warren County Area Plan Comm'n*, 244 F.3d 601, 603 (7th Cir.2001). However, this is not one of the more difficult cases. The three primary considerations are: (1) whether the government action applies to specific individuals or to unnamed and unspecified persons; (2) whether the promulgating agency considers general facts or adjudicates a particular set of disputed facts; and (3) whether the action determines policy issues or resolves specific disputes between particular parties. *United States v. Fla. E. Coast R.R. Co.*, 410 U.S. 224, 244-46, 93 S.Ct. 810, 35 L.Ed.2d 223 (1973); *Harris v. County of Riverside*, 904 F.2d 497, 501 (9th Cir.1990); *McGarr*, 774 F.2d at 780.

In *McGarr*, the Seventh Circuit considered a general order issued by the Illinois District Court that required trial attorneys to have a certain level of trial experience. 774 F.2d at 779. The rule revoked the licenses of those lawyers who did not have the requisite level of experience. As in this case, the plaintiff claimed that because the rule changed the admission requirements after he had qualified for admission, the local order effectively "disbarred" him. *Id.* at 780. Similar to the reasons set forth by the District Court in this case, the Seventh Circuit rejected the plaintiff's claim, stating:

> Disbarment ... is a punishment or penalty imposed on the lawyer. A court conducting a disbarment proceeding must determine for itself the facts of the attorney's conduct and whether that conduct had been so grievous as to require disbarment. Thus, the ultimate result of a disbarment proceeding is a finding, based upon the conduct and actions of an individual attorney, that the individual attorney is unfit. Unlike a disbarment proceeding focused upon specific incidents of misconduct by an individual attorney, the district court's trial bar rules were adopted in response to fact finding that was not focused on individual attorneys.

Id. (internal quotation marks and citations omitted).

The present case is indistinguishable. The requirement that all attorneys be members of the Arizona Bar was adopted to streamline the District Court's attorney regulation procedures. The effect of the law is to revoke a general class of licenses, but unlike a disbarment proceeding, the ground for doing so is not individual attorney misconduct. *Cf. Ohio Bell Tel. Co. v. Pub. Util. Comm'n*, 301 U.S. 292, 302-05, 57 S.Ct. 724, 81 L.Ed. 1093 (1937) (holding that a retroactive rate

determination based solely on facts about one supplier is adjudicative). Rule 1.5(a) is directed at the legitimate government purpose of improving the method and means of attorney regulation in the federal district courts, and it attempts to achieve this goal without targeting individual misconduct.

Since the amended rule affects a large number of people, as opposed to targeting a small number of individuals based on individual factual determinations, Gallo's claim that he is entitled to individual notice and an opportunity to be heard fails because the amended legislative rule does not "give rise to constitutional procedural due process requirements."[7] *Christensen v. Yolo County Bd. of Supervisors*, 995 F.2d 161, 166 (9th Cir. 1993); *see also Harris*, 904 F.2d at 502 (holding that no individual notice and hearing required where county decisions affect large numbers of people); *McGarr*, 774 F.2d at 780.

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[7] As discussed, *infra*, Gallo does not contend that he received inadequate public notice of the pending changes to Rule 1.5(a). The District Court issued notice of public hearings on the proposed amendments on May 19, 1999. The amended rules were apparently posted on the District Court's website. On July 12, 1999, the District Court held two public hearings regarding the amended rule at which several interested parties expressed their concerns with Rule 1.5. Gallo had access to the requisite information and his "rights [were] protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule." *Bi-Metallic*, 239 U.S. at 445, 36 S.Ct. 141 (1915).

In most cases an individual would be entitled to individual notice and an opportunity to be heard before retroactive extinguishment of his or her vested property interest. Justice Scalia has commented that the "central distinction" between rule-making and adjudication is that rules have legal consequences "only for the future." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216- 17, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988) (Scalia, J., concurring). Nevertheless, this case presents the unique situation in which the rule, although having that "central distinction" of retroactivity, resembles legislation in every other way. Namely, (1) the government action applies to unnamed and unspecified persons, (2) the District Court considered general rather than particular facts; and, (3) rather than resolving specific disputes between particular parties, the action determines policy issues regarding the regulation of attorney admissions in the federal courts.

For these reasons, we conclude that even when subjected to a constitutional analysis, the balance of factors weighs in favor of finding that the enactment of Local Rule 1.5(a) is a legislative act such that Gallo's claim fails. Even though he arguably was deprived of a vested property interest, the rule bears a rational relationship to legitimate government interests.

3. Applicability of Local Rule 1.5

As discussed above, we do not characterize the actions taken by the District Court as an unconstitutional disbarment. It is the well established law that a court's power to disbar "can only be exercised where there has been such conduct on the part of the parties complained of as shows them to be unfit to be members of the profession." *Ex Parte Robinson*, 86 U.S.

(19 Wall.) 505, 512, 22 L.Ed. 205 (1873); *see also Ex Parte Garland*, 71 U.S. (4 Wall.) 333, 379, 18 L.Ed. 366 (1866). Here, Gallo is guilty of no misconduct and the District Court's finding that he could not appear generally before it was not the result of any disciplinary action. Instead, his ability to practice generally before the District Court expired as a result of the amendments to the laws governing membership. Accordingly, the District Court committed no clear error by finding that the amendments did not "inherently interfere with [Gallo's] ability to practice before this Court." October 2, 2000, at 2. Gallo still has the right to practice before the District Court by seeking admission to the State Bar of Arizona or by requesting on a case-by-case basis that he be allowed to appear before the District Court *pro hac vice.*

Having resolved that the District Court did not act to disbar Gallo, we address Gallo's additional argument that because he gained admission at one point in time, he cannot now be denied the right to practice generally before the District Court because the qualifications for admission have changed. He characterizes this argument as one for prospective application of Rule 1.5. Gallo cites the Supreme Court's holding in *Selling v. Radford*, which held that where the prerequisite to admission to the Bar of the Supreme Court was:

> membership of the Bar of the court of last resort of a state ... its effect is exhausted upon admission to this Bar which it has served to secure, – a result which becomes manifest by the consideration that although the membership of the Bar of the court of last resort of a state, after admission here, might be lost by change of domicil from one state to another, if so provided by the state law or rule of court, or by any other cause not involving unworthiness, such loss would be wholly

> negligible upon the right to continue to be a member of the Bar of this court.

Selling v. Radford, 243 U.S. 46, 49, 37 S.Ct. 377, 61 L.Ed. 585 (1917).

Gallo interprets this holding to stand for the proposition that upon admission to practice before the District Court, no change in the admission criteria may act to deny him his right to continue as a member of the bar. He asserts that his membership in the District Court's bar may only be revoked upon a finding of "unworthiness" or if he is "unfit" to be a member of the bar. In support of this argument, Gallo cites a previous opinion by this court, *Brown v. Smith (In re Poole)*, 222 F.3d 618 (9th Cir.2000). However, this case involved matters of representation that occurred before the amendments to the Local Rules. *Id.* at 621. As a result, the holding neither addressed nor ruled definitively upon the issues presented in this case.

In *In re Poole*, we affirmed that "a federal court has the power to control admission to its bar and to discipline attorneys who appear before it." *Id.* at 620 (internal quotation marks and citation omitted). We also stated that "[o]nce federal admission is secured, a change in circumstances underlying *state admission* ... is wholly negligible on the right to practice before a federal court." *Id.* (emphasis added) (internal quotation marks and citation omitted).

Unlike *In re Poole*, here we are asked to address the implications of a change in circumstance underlying *federal admission.* The holding in *In re Poole* does not address this issue. Moreover, it focused on the implications of disbarment from the federal bar as a result of disbarment from practicing

before a state court. *Id.* (finding that "[w]hile a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route") (internal quotation marks and citations omitted). In light of the above, the holding of *In re Poole* is neither binding nor relevant to our analysis.

Although the Local Rules promulgated by the District Court prior to 1999 allowed admission into the Arizona federal bar based on admission to federal bars located in other states, there is no guaranteed right to such admission. *Zambrano,* 885 F.2d at 1483. As discussed, *supra,* the District Court may revoke such admission if it is rationally related to a legitimate purpose. Moreover, it is well established that admission to a bar of a district court usually requires that the applicant be a member in good standing of the bar of a state's highest court. *Id.* Such a requirement is well within the District Court's rule making power and as established, *supra,* does not violate any constitutional right. *Giannini,* 911 F.2d at 359.

Absent any persuasive argument to the contrary, we therefore find that the District Court properly acted within its rule making authority under Section 2071 to alter its rules of local practice by requiring members to obtain membership in the State Bar of Arizona. Although the amendment effectively terminated Gallo's membership in the bar of the District Court, such a result, though unfortunate, violates no constitutional or statutory provision. Moreover, he may qualify for general admission by joining the State Bar of Arizona or by appearing on a *pro hac vice* basis.

We recognize that the *pro hac vice* option requires the attorney seeking such admission to associate with a member

of the District Court bar who can sign the necessary court documents. This may be construed as burdensome for the attorney as well as expensive for the client. *Frazier v. Heebe,* 482 U.S. 641, 650-51, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987). Also, the decision to grant *pro hac vice* status is discretionary.[8] Nonetheless, we find these burdens insufficient to constitute grounds for mandating a federal bar to preserve the membership of attorneys who are not members of the bar of the associated state. Requiring either membership in the State Bar of Arizona or *pro hac vice* status is rationally tailored to serve the District Court's legitimate interest in regulating the conduct and ethical fitness of lawyers who practice before it. *Russell,* 275 F.3d at 820.

As set forth above, we find that applying the amended Rule 1.5 to Gallo is consistent with the District Court's fulfillment of its responsibilities. The court is unpersuaded by Gallo's

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[8] *But see In re Evans,* 524 F.2d 1004, 1007 (5th Cir.1975) (finding that "[a]n applicant for admission *pro hac vice* who is a member in good standing of a state bar may not be denied the privilege to appear except on a showing that in any legal matter, whether before the particular district court or in another jurisdiction, he has been guilty of unethical conduct of such a nature as to justify disbarment of a lawyer admitted generally to the bar of the court") (internal quotation marks and citations omitted); *U.S. v. Ries,* 100 F.3d 1469, 1472 (9th Cir.1996) (finding that "[i]n denying a pro hac vice application, the judge must articulate his reasons, for the benefit of the defendant and the reviewing court. [M]echanistic application of rules limiting such appearances is improper.") (internal quotation marks and citation omitted).

argument that interpreting the Local Rules as did the District Court would result in a situation in which attorneys who gain admission to the District Court but let their Arizona state licenses lapse do not risk losing their licenses to practice before the District Court. This assertion is simply without merit, as the amended Local Rules specifically require that only attorneys in good standing with the Arizona State Bar may be members of the bar of the District Court.

Gallo argues alternatively that the amended version of Rule 1.5 should apply only to new admissions occurring subsequent to its effective date. As set forth above, we recognize that some districts do include grandfather clauses. *See supra* discussion 16289-91. Although it was well within the authority of the District Court to enact such a clause, it is not required. In the absence of any grounds upon which to infer such an intent, we refrain from doing so. As the District Court noted, the language of Section 2071 states: "Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order." 28 U.S.C. § 2071(b). In contrast to this language allowing the District Court to prescribe rules as it sees fit, Gallo has presented no legal grounds for finding that the District Court erred in applying the amended Rule 1.5 to prohibit him from appearing generally before it.

4. Adequacy of Notice

In his appeal, Gallo also argues that he did not receive proper notice of the consequences he would face as a result of the pertinent amendment to Rule 1.5. Before denying an attorney admission or readmission to the bar of the District Court on

the basis of character, due process requires that the District Court give the applicant notice, the reasons for its action, and an opportunity to respond. *In re Ruffalo,* 390 U.S. 544, 550, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968). As we have repeatedly emphasized, all parties are in agreement that Gallo committed no act of misconduct that led to the decision of the District Court to terminate his license to practice generally before it. He has not been subjected to a disbarment proceeding, which we agree would trigger the need for a judicial determination of misconduct.

Section 2071(b) includes the following provision for notice: "Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment." Accordingly, we find that the following actions taken by the District Court satisfy any due process requirements that may exist.[9]

On July 12, 1999, the District Court held hearings on the amendments to the Local Rules. Supplement to Record, at 4-6. After the adoption of the amendments, the District Court states that it promulgated notice via postings on its website, as well as through hard copy notices in its intake offices. The District Court also represented to this court that it sent mailings to out-of-state attorneys admitted prior to September 15, 1999, who had made an appearance and/or requested a certificate of good standing since that time. For a three-month period prior to enacting the amendments, the District Court maintains that notice of the amendments was included in footnotes placed on all cover sheets used to transmit orders

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[9] See discussion, *supra,* Section 2.

and judgments issued in civil and criminal cases. Finally, in January 2000, the District Court made a presentation to the Federal Bar Association luncheon in Phoenix. At all times, the proposed amendments, and then the final rules, were available on the District Court's website.

In light of these actions, we do not agree with Gallo's assertion that all 6,796 attorneys should have received notice by U.S. mail.[10] There is no evidence that the amendment resulted from any specific disciplinary proceedings against any of the affected 6,796 attorneys.

Gallo also admits that prior to commencing an action in the District Court, he reviewed the Local Rules and thus had actual notice of the amendments. Moreover, the Attorney Admissions Clerk informed Gallo of his status in the August 30, 2000 letter. Finally, the District Court reviewed and considered the merits of Gallo's claims in his *Ex Parte* Application; it issued an order accordingly. The District Court's compliance with the opportunity for comment provision in Section 2071(b), its promulgation of notice of the amendments, the notice Gallo admits he received, and the opportunity for hearing that Gallo received from the District Court satisfy any due process requirements Gallo argues he deserves.

The above forms of notice notwithstanding, Gallo requests that we notify each active federal judge in the District Court of our decision. Appellant's Opening Brief ("AOB"), at 22-23.

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[10] Were this in fact a "mass disbarment," as characterized by Gallo, we might well be inclined to find otherwise.

However, such notice is also unnecessary.

5. Supervisory Power to Modify Local Rule 1.5

Gallo argues that because this court has plenary supervisory power over the rules adopted by the District Court, we can alter or dispense with rules we find unconstitutional on their face or as applied. *Frazier,* 482 U.S. at 645-46, 107 S.Ct. 2607. This court's supervisory powers are generally exercised over rules implemented pursuant to Section 2071. *Russell,* 275 F.3d at 821. However, this power is not unbounded and may not be exercised absent a clear basis in fact and law. *Id.* (citing *United States v. Gatto,* 763 F.2d 1040, 1046 (9th Cir.1985)).

As discussed above, we reject Gallo's characterization of the District Court's enactment of the amendments as a revocation of his life tenure as a member of the bar. Moreover, as per our analysis of the constitutional implications of the District Court decision, we find that it was rationally related to a legitimate interest such that it passes constitutional scrutiny.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 01-17332

DAVID J. GALLO, Movant-Appellant,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,
Real Party in Interest-Appellee.

Filed Dec. 31 2003.

ORDER

Before: BRUNETTI and TASHIMA, Circuit Judges, and EZRA, District Judge.[]

Judge Tashima has voted to deny the petition for rehearing en banc and Judges Brunetti and Ezra so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f).

The petition for rehearing en banc is denied.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CIV 00-852-PHX-SMM

TOMMIE L. BARTLETT, *et al.*,
Plaintiffs,

v.

ARTHUR ANDERSEN, L.L.P., *et al.*,
Defendants.

Filed Oct. 2, 2000.

ORDER

The Court has reviewed and considered the Ex parte Application for Order Clarifying the Status of Counsel, or Alternatively, for an Order *Nunc Pro Tunc* Granting Admission *Pro Hac Vice* filed by David J. Gallo (Applicant). Applicant seeks an Order stating that he remains a member of the bar of this Court.

Applicant was admitted to practice before the bar of

this Court on August 7, 1995, under then-Local Rule 1.5. Then-Local Rule 1.5 allowed non-resident attorneys to gain admission to practice based on their admission to the bar of the United States District Court. On September 15, 1999, the United States District Court for the District of Arizona formally adopted revised Local Rules, which contained substantial changes to Local Rule 1.5. Local Rule 1.5(a) now states in relevant part, "[a]dmission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona." Similarly, Local Rule 1.5(b) also states, "Except as herein otherwise provided, only members of the bar of this Court shall practice in this District."

It is well established that courts have the inherent authority to regulate the practice of law in their forums: "One of the inherent powers of any federal court is the admission and discipline of attorneys practicing before it." *In re Corn Derivatives Antitrust Litigation*, 748 F.2d 157, 160 (3d Cir.1984); *see also Abdallah v. Pileggi*, 914 F. Supp. 1115, 1118 (D.N.J. 1996). District Court have "not only an inherent power but a statutory right to promulgate rules with respect to admissions of attorneys to practice at its bar." *Laughlin v. Cephane*, 77 F. Supp. 105-06 (D.D.C. 1947).

In acknowledgment of the need for out-of-state attorneys to have a means for making limited appearances, Local Rule 1.5(b)(3) established a *pro hac vice* provision. This provision is available to any non-resident attorney who wishes to appear in an action filed in this Court. This provision clearly applies to Applicant's situation and, thereby, provides a reasonable means for Applicant to practice in this District.

Applicant is concerned that the Clerk of Court may have deleted his name from the roll of attorneys licenced to practice before this Court and that such action occurred without due process. The change in the Rule neither resulted from a disciplinary action against Applicant nor arose out of a complaint filed against Applicant. Moreover, the Rule change does not inherently interfere with Applicant's ability to practice before this Court.

THEREFORE, IT IS ORDERED denying Applicant's *ex parte* Application for Order Clarifying Status of Counsel, or, Alternatively, for Order *Nunc Pro Tunc* Granting Admission *Pro Hac Vice*. Pursuant to Local Rule 1.5(b)(3), Applicant may seek *pro hac vice* admission. Because Applicant has already submitted a completed *pro hac vice* application attached as an exhibit to this Application, Applicant must simply submit the requisite $25.00 fee for *pro hac vice* admission.

DATED this 27 day of September, 2000.

/s/ Stephen M. McNamee
United States District Judge

(2)

No. 03-1366

Supreme Court, U.S.
FILED
APR 2 9 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

DAVID J. GALLO,

Petitioner,

v.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Should this Court refuse to grant a writ of certiorari where Petitioner has not shown that the decision entered by the Court of Appeals in this case is in conflict with either decisions by any other Court of Appeals or relevant decisions of this Court?

2. Was Local Rule 1.5 of the United States District Court for the District of Arizona, as amended on September 15, 1999, constitutional as applied to Petitioner?

3. Should this Court refuse to grant a writ of certiorari where Petitioner has not shown that the decision entered by the Court of Appeals calls for an exercise of this Court's supervisory power?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is David J. Gallo, an individual. Respondent is the United States District Court for the District of Arizona.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit (the "Court of Appeals") is reported at 349 F.3d 1169 and is found at page 1a of the Petitioner's Appendix ("Pet. App."). The unreported ruling of the United States District Court for the District of Arizona (the "District Court") is found in Pet. App. at page 33a.

JURISDICTION

The Court of Appeals entered its decision on November 19, 2003. The Court of Appeals denied Petitioner's petition for rehearing *en banc* on December 31, 2003. Petitioner timely filed his Petition for Writ of Certiorari ("Pet. Br.") on March 24, 2004. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

This case involves 28 U.S.C. § 2071, which provides, in pertinent part, that "all courts established by Acts of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title."

This case also involves Local Rule 1.5(a) of the United States District Court for the District of Arizona, which provides, in pertinent part, that "[a]dmission to and continuing membership in the bar of this Court is limited

to attorneys who are active members in good standing of the State Bar of Arizona . . ."

STATEMENT OF THE CASE

On July 28, 1995, Petitioner David J. Gallo (hereinafter "Gallo") was admitted to practice generally before the United States District Court for the District of Arizona (the "District Court"), by virtue of his membership in the bar of another District Court. (Pet. Br. at 2)

On September 15, 1999, the District Court revised its Local Rule 1.5(a) so that, henceforth, the roster of attorneys admitted to practice generally before it would be restricted to attorneys who were members in good standing of the State Bar of Arizona. (Pet. App. at 2a) Before revising Local Rule 1.5(a), the District Court posted public notice of the proposed changes on its Web site, and held public hearings upon prior notice regarding the rule change. (Appendix of Respondent the United States District Court for the District of Arizona [hereinafter cited as "Dist. Ct. App."] at 23a-29a) After the District Court amended Rule 1.5(a), it again posted the revisions on its Web site, noted the revisions on all of its coversheets transmitting its judges' orders and judgments, and posted the revisions at its two courthouses. (*Id.*)

As Gallo was not a member of the State Bar of Arizona, the District Court's revision to its Local Rule prevented him from appearing generally before the District Court after September 15, 1999. Gallo claims not to have received proper notice of the proposed revisions. (Pet. Br. at 4) Nonetheless, Gallo concedes that he was aware of the changes to Local Rule 1.5(a) by May 2000, when he read

that rule before he filed the underlying action, encaptioned *Bartlett v. Arthur Andersen, L.L.P.*, Arizona District Court Case No. CV-00-0852-PHX-SMM ("the Baptist Foundation suit") (Pet. Br. at 4). Despite his awareness of the revision, Gallo filed the Baptist Foundation suit in the District Court and appeared before the District Court for several months because he believed revised Local Rule 1.5(a) was unconstitutional and thus inapplicable to him. (Pet. Br. at 4-5)

On September 1, 2000, the District Court sent Gallo a letter advising him that he was not admitted to practice generally before the District Court and that he could not continue to appear generally before the District Court. (Pet. Br. at 5) In response, Gallo requested that the District Court confirm that he was still admitted to practice generally before it, and, in the alternative, applied to appear *pro hac vice*. (Pet. Br. at 5-6) On October 2, 2000, the District Court issued an Order granting Gallo's application for admission *pro hac vice*, but informing Gallo that he was no longer admitted to practice generally before the District Court. (Pet. Br. at 7) Gallo represented his clients *pro hac vice* throughout the balance of the Baptist Foundation suit. (*Id.*) On February 19, 2002, after the conclusion of that suit, Gallo appealed the District Court's October 2, 2000 Order to the Court of Appeals for the Ninth Circuit. (Dist. Ct. App., *infra*, at 1a)

On November 19, 2003, the Court of Appeals held that the District Court's October 2, 2000 Order was not a disbarment of Gallo, but rather a denial of his application for a waiver of the Local Rules. (Pet. App. at 11a) The Court of Appeals also held that Local Rule 1.5(a), and the District Court's notice of the proposed changes to the rule, denied Gallo neither substantive nor procedural due

process. (Pet. App. at 13a-23a) On December 31, 2003, the Court of Appeals denied Gallo's request for rehearing *en banc*. (Pet. App. at 32a) Gallo now seeks the intervention of this Court.

ARGUMENT

I. THIS COURT SHOULD NOT ISSUE THE WRIT, AS GALLO HAS FAILED TO SHOW EITHER CONFLICT AMONG THE COURTS OF APPEAL OR CONFLICT BETWEEN THE DECISION OF THE COURT OF APPEALS AND ANY DECISION OF THIS COURT.

A. Neither the Decision of the Court of Appeals, Nor the District Court's Decision To Enact Revised Local Rule 1.5(a), Conflict With Any Decision of Any Other Court of Appeals.

One major function of this Court is to resolve conflicts between the Courts of Appeal. *E.g., Boeing Co. v. United States*, 537 U.S. 437, 446 (2003); SUP. CT. R. 10. In this case, however, Petitioner has pointed to no such conflict among the Courts of Appeal as to the propriety of rules such as Local Rule 1.5(a), for there is none. For this reason, this is no case for certiorari.

The harmony between Local Rule 1.5(a) and the rules of many other District Courts also shows that there is no conflict within the federal courts requiring this Court's attention. As both the Court of Appeals and Gallo himself recognize, many District Courts require membership in the bar of the state in which they sit as a prerequisite to admission to practice before those courts. (*See* Pet. App. at 13a (The Court of Appeals: "amendments to [Local Rule

1.5(a)] are similar to laws adopted by the majority of federal district courts"); Pet. Br. at 15 (Gallo: "Numerous district courts currently impose" a requirement of state bar membership as a prerequisite to admission)).

In fact, no less than *fifty-seven* District Courts, situated within nine Circuits, have adopted rules like Local Rule 1.5(a).[1] Petitioner has not pointed to any Court of Appeals that has struck down any of the above rules, nor is the District Court aware of any Court of Appeals having done so. In short, there is no conflict between the Courts of Appeal or even among the District Courts that this Court need resolve. This Court should not issue the writ.

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[1] *See, e.g.*, M.D. Ala. L.R. 83.1; N.D. Ala. L.R. 83.1; S.D. Ala. L.R. 83.5; D. Alaska L.R. 83.1; C.D. Cal. L.R. 83-2.2.1; E.D. Cal. Gen. R. 83-180(a); N.D. Cal. Civ. R. 11-1(b); S.D. Cal. Civ. R. 83.3; D. Del. L.R. 83.5; M.D. Fla. Gen. R. 2.01; N.D. Fla. Gen. R. 11.1; S.D. Fla. Special Rules Governing Admission and Practice of Attorneys, Rule 1; M.D. Ga. L.R. 83.1.1; N.D. Ga. Civ. L.R. 83.1; S.D. Ga. Civ. L.R. 83.2; D. Haw. L.R. 83.1; D. Idaho Civ. R. 83.4; N.D. Iowa Civ. R. 83.2; S.D. Iowa Civ. R. 83.2; E.D. Ky. L.R. 83.1; W.D. Ky. L.R. 83.1; E.D. La. L.R. 83.2.2E; M.D. La. L.R. 83.2.2M and W; W.D. La. L.R. 83.2.2M and W; D. Me. Civ. R. 83.1; D. Mass. L.R. 83.5.1; D. Minn. L.R. 83.5; N.D. Miss. L.R. 83.1; S.D. Miss. Unif. L.R. 83.1; D. Mont. L.R. 83.3; D. Nev. L.R. IA 10-1; D.N.H. L.R. 83.1; D.N.J. Civ. R. 101.1; D.N.M. L.R.-Civ 83.2; Local Civil Rule 83.1, EDNC; M.D.N.C. Civ. R. 83.1; W.D.N.C. L.R. 83.1; S.D. Ohio Civ. R. 83.3; D. Or. L.R. 83.2; E.D. Pa. L.R. 83.5; M.D. Pa. L.R. 83.8; D.R.I. L.R. 4(b)(1); D.S.C. L. Civ. R. 83.1.02; D.S.D. L.R. 83.2; M.D. Tenn. L.R. 1(b); D. Utah Civ. R. 83-1.1; E.D. Va. L. Civ. R. 83.1; W.D. Va. Standing Order III(B)(1); E.D. Wash L.R. 83.2; W.D. Wash GR 2(b); N.D. W. Va. L.R. Gen. P. 83.01; S.D.W. Va. L.R. Gen. P. 2.01; U.S.D.C. L.R. 83.12.2 (Wyo.); D. Guam Gen. R. 17.1; D.N. Mar. I. L.R. 83.5; D.V.I. L.R. 83.1.

B. The Decision of the Court of Appeals Does Not Conflict With Any Decision of This Court.

Gallo's suggestion that the decision of the Court of Appeals conflicts with two Civil War-era decisions of this Court fails badly. Gallo grounds his argument in *Ex Parte Robinson*, 86 U.S. (19 Wall.) 505 (1873) and *Ex Parte Garland*, 71 U.S. (4 Wall.) 373 (1866), which he contends stand for the proposition that no attorney may be removed by a District Court from its membership rolls absent attorney misconduct. (Pet. Br. at pp. 11-15) Gallo even goes so far as to argue that this Court has held, in *Robinson* and *Garland*, that attorneys licensed to practice before the federal bar have "life tenure" that cannot be revoked so long as the attorneys display "good behavior." (*Id.*)

Gallo's reliance upon *Robinson* is misplaced, because that case is wholly distinguishable from the case at hand. In *Robinson*, this Court addressed the propriety of punishing a lawyer for contempt by removing him from a District Court's membership rolls. *See Robinson*, 86 U.S. at 510-11. The *Robinson* Court determined that the removal was not authorized by the Judiciary Act of 1789, which limited punishment for contempt to fines or imprisonment, and held that, while District Courts have the inherent power to punish for contempt, that power may only be exercised after notice of charges of misconduct and an opportunity to be heard. *See id.* at 512. Gallo's case, unlike *Robinson*, is one in which there is neither a contempt nor a punitive or disciplinary act taken against counsel.

Gallo's citation of *Garland* likewise misses the mark. That case too involved punishing lawyers -- specifically, Congress' attempt to prohibit all who had aided the Confederacy from practicing in the post-Civil War federal

courts. *See Garland*, 71 U.S. at 378. The *Garland* Court struck the law down as an unconstitutional ex post facto law, a bill of attainder, and an infringement upon the President's Article II power to pardon former Confederates. *See id.* at 379. The Court also held that Congress did not have the power to regulate a fundamentally judicial function – the admission or exclusion of particular attorneys to the practice of law. *Id.* at 378-79. Gallo's case, which is utterly unlike *Garland*, does not involve either an ex post facto law, a bill of attainder, or the subversion of Presidential action.

Gallo's analysis of both *Robinson* and *Garland* is fundamentally flawed because in this case, unlike those Civil War-era cases, the District Court in no way sought to punish him, or even to exclude him from practicing before it. Instead, the District Court merely exercised its rule-making authority under Section 2071, which changed the manner of Gallo's continued appearance to *pro hac vice*. Despite Gallo's hyperbole, the District Court's action in amending Local Rule 1.5(a) was in no way an "*en masse* disbarment." A lawyer is *disbarred* for serious misconduct, after which the lawyer is precluded from any form of legal practice in the court from which he or she was disbarred. *E.g.*, BLACK'S LAW DICTIONARY 463 (6th ed. 1990) (defining disbarment as an "[a]ct of court in suspending attorney's license to practice law. A disbarment proceeding is . . . disciplinary in nature . . . "); *Ex Parte Wall*, 107 U.S. 265, 273 (1882) (stating that disbarment is a sanction for "gross cases of misconduct."); *In re Sealed Appellant*, 194 F.3d 666, 674 (5th Cir. 1999) ("Disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously, adversely reflects on the attorneys' fitness

to practice."); SUP. CT. R. 8 (providing for disbarment where a member of the bar of the Court has either been disbarred from practice before any other court, or "has engaged in conduct unbecoming a member of the Bar of this Court."). Here, there is neither punishment nor a suggestion of wrongdoing. There is only quintessential Section 2071 rulemaking – administrative action which is not discipline, not punishment, and not an injury to any substantive right of Gallo or his clients. *Robinson* and *Garland* are inapposite.

Gallo wishfully argues that the reference in *Robinson* to attorneys maintaining their bar membership during "good behavior" makes attorneys admitted to the bar of a District Court constitutionally unremovable except for misconduct. (Pet. Br. at 11-13) Gallo reasons that, because Article III of the United States Constitution makes federal judges life tenured during their "good behavior," this Court's use of the phrase "good behavior" in *Robinson* somehow elevated counsel to the status of Article III officers. (Pet. Br. at 11-12, *citing* 86 U.S. at 512) Gallo's bootstrap fails badly. *Robinson* does not describe lawyers as Article III officers, nor does Article III mention lawyers, though it expressly refers to judges. *See generally Robinson*, 86 U.S. at 512; *see also* U.S. CONST. art. III, § 1. Put another way, the presence of an enumerated right in the United States Constitution makes it a constitutional right. The mere description of a privilege by use of a word or phrase which also happens to appear in the United States Constitution does not.

For each of these reasons, Gallo has failed to establish a conflict between *Robinson* or *Garland* and the decision of the Court of Appeals. This Court should not issue the writ.

II. LOCAL RULE 1.5(a) IS A LEGITIMATE EXERCISE OF THE DISTRICT COURT'S RULEMAKING AUTHORITY, AND IS CONSTITUTIONAL AS APPLIED TO GALLO.

A. Congress Authorized the District Court To Promulgate Local Rule 1.5(a) By Enacting 28 U.S.C. § 2071.

It is beyond question that the District Court has broad authority to regulate practice before it, including the authority to regulate the rolls of attorneys who are admitted to practice before it. *See* 28 U.S.C. § 2071. Section 2071 provides that "all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title." *Id.* Section 2071 authorizes the enactment of *any* local rule that does not conflict with an identified statute or Federal Rule of Civil Procedure. *See* 28 U.S.C. § 2072.

Rules like Local Rule 1.5(a), authorized by Section 2071, are the means by which our District Courts assure themselves of the continued good behavior and character of the attorneys who practice before them. *See, e.g., Giannini v. Real*, 911 F.2d 354, 360 (9th Cir. 1990); *see also In re G.L.S.*, 745 F.2d 856, 859 (4th Cir. 1984); *In re Sutter*, 543 F.2d 1030, 1036 (2d Cir. 1976); *In re Abrams*, 521 F.2d 1094, 1099 (3d Cir. 1975); *Sanders v. Russell*, 401 F.2d 241, 245-46 (5th Cir. 1968).

As the Ninth Circuit stated in *Application of Wasserman*:

> In view of the notorious fact that lawyers whose qualities or acts have made them persona non

> grata in one state where they have been admitted to the courts, tend to migrate to another state where they are not as well known, the individual courts are faced with a tremendous problem in screening applicants for admission.

270 F.2d 213, 216 (9th Cir. 1956).

As the District Courts do not have their own administrative mechanisms by which to supervise and regulate ethics, local rules like Local Rule 1.5(a) provide some assurance, through the adopted mechanisms of the forum state's bar, of ethical behavior by admitted attorneys. This is a function that this Court recognized as long ago as 1866 that the federal courts must undertake. *Garland*, 71 U.S. at 379. Local Rule 1.5(a) serves that important goal.

While Gallo questions the retroactive application of amended Local Rule 1.5(a), that application is authorized by Section 2071. Section 2071 specifically states that rules created by the District Court under its auspices "shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order." 28 U.S.C. § 2071(b). In other words, Section 2071 empowers a District Court to choose whether to apply the rules it fashions to matters already in progress, such as ongoing cases or attorney admissions previously granted. *See id.*

Case law construing Section 2071 confirms that the section empowers district courts to fashion rules that affect prospectively how a lawyer conducts a case and how a lawyer appears before the court. In *Ma v. Community Bank*, 686 F.2d 459 (7th Cir. 1982), a New York resident litigating a case in the Eastern District of Wisconsin was ordered by the Wisconsin court, after the litigation had

commenced and consistent with the Wisconsin court's local rules, to retain local counsel. The Seventh Circuit upheld the order and the local rule as a proper exercise of the District Court's discretion under Section 2071. *See id.* at 470-71.

The District Court's application of Local Rule 1.5(a) to Gallo is thus fully consistent with Section 2071 and case law interpreting it. This Court should not issue the writ.

B. The District Court's Amendment to Local Rule 1.5(a) in No Way Deprived Gallo of Substantive Due Process.

While Gallo rightly notes that he has a property interest in his license to practice law, the District Court's amendment of Rule 1.5(a) in no way violated his right to substantive due process. As the Court of Appeals stated in this case, "a retroactive licensing scheme not affecting fundamental rights will pass scrutiny if the scheme bears 'a rational relationship to a legitimate state interest.'" (Pet. App. at 14a) (quoting *Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir. 2000)). This analysis applies to the regulation of admissions to a state bar. *See Schware v. Bd. of Bar Exam'rs of State of N.M.*, 353 U.S. 232, 239 (1957) (holding that state bar qualifications must be rationally connected to the applicant's "fitness or capacity" to practice law). Rule 1.5(a), which bears well more than the required "rational relationship to a legitimate state interest," easily passes constitutional muster.

The legitimate interest served by tying general admission to a District Court to membership in that District Court's state bar is the enhanced regulation of the

fitness of attorneys. *See Giannini*, 911 F.2d at 360. (*See also* Pet. App. at 18a-19a) There can be no serious dispute that regulating the fitness of a District Court's admittees is a legitimate interest, given that Congress has charged the District Court with the task of regulating the admission of the attorneys who practice before it. 28 U.S.C. § 2071. The only question is whether Rule 1.5(a) is rationally related to that interest.

A recent decision of the Ninth Circuit illustrates why Rule 1.5(a) is rationally related to that legitimate interest. In *Russell v. Hug*, 275 F.3d 812 (9th Cir. 2002), the Ninth Circuit upheld an order of the District Court for the Northern District of California requiring private attorneys who represented indigent defendants to be members of the California State Bar. The Ninth Circuit found the rule to be rationally related to the same legitimate interest at the heart of Rule 1.5(a), finding that the challenged order made discipline easier for that District Court by giving the Court recourse to the California bar's disciplinary mechanism. *Id.* at 820. Especially because the District Courts generally lack the extensive investment in and commitment to attorney regulation and discipline which is typically found in state bars, it is eminently rational for the District Courts to rely upon the greater regulatory resources of their state brethren to assure the fitness and character of would-be general admittees. (Pet. App. at 18a)

Another measure of the rationality of Local Rule 1.5(a) is empirical – the number of District Courts which have adopted like measures. As discussed in Section I of this brief, fifty-seven District Courts have gone down the same path as the respondent District Court, and adopted a rule requiring membership in the forum state's bar as a

prerequisite to practice before the District Court. *See supra* p. 5, n.1.

In this case, the Court of Appeals correctly held that Local Rule 1.5(a) "serves the legitimate interest of ensuring that all attorneys practicing before the [District Court] 'clear the standard required' by [the State Bar of Arizona]." (Pet. App. at 18a) (quoting *Russell*, 275 F.3d at 819). That rule well "serves the court's legitimate interest in simplifying the disciplinary process," permitting the District Court to simply make all disciplinary referrals to the Arizona State Bar, rather than to any of fifty state bars. (Pet. App. at 19a) Thus, as the Court of Appeals correctly held, Local Rule 1.5(a) does not violate substantive due process because "it is justified by the rational purpose of streamlining and perfecting the regulation of attorney admission in the Arizona District Court." *Id.*

Gallo's other attempts to minimize the legitimacy of the District Court's interest are likewise unavailing. He argues that, while membership in a state bar "may have the effect of ensuring some base level of familiarity" with the forum state's laws, such familiarity is only necessary in diversity cases. However, in so arguing, Petitioner completely ignores the effects of the rule that the Court of Appeals found important in this case – "streamlining and perfecting the regulation of attorney admission" in the District Court. (Pet. App. at 19a) Ensuring the character and fitness of the attorneys who practice before the District Court is a key purpose of the rule, not merely attempting to ensure that those attorneys are familiar with Arizona law.

Gallo also contends that requiring membership in the forum state bar may "deprive litigants of their choice of

counsel," but then recognizes that most District Courts, including the respondent District Court, permit admission *pro hac vice*. (Pet. Br. at 17) Gallo argues that admission *pro hac vice* is not "the equivalent of a license," and is thus an inadequate substitute for practicing generally before the court. (*Id.*) However, the Court of Appeals correctly stated that, while *pro hac vice* admission "may be construed as burdensome for the attorney as well as expensive for the client," the burdens imposed by appearing *pro hac vice* are outweighed by the District Court's legitimate interest in regulating the character and fitness of those who appear before it. (Pet. App. at 26a-27a)

Gallo's citation to *Snelling v. Radford*, 243 U.S. 46, 49 (1917), is not to the contrary. Gallo cites *Snelling* in support of his argument that the requirement of forum state membership might somehow be improper. (Pet. Br. at 16) *Snelling*, however, involved the question of whether this Court was required to disbar an attorney admitted to practice before it where the application was based upon an admission to practice in Michigan, which had been later revoked for immoral conduct. *See id.* at 48. Once again, this is not a situation in which a court removes an attorney from its rolls because of misconduct; thus, *Snelling* is inapposite.

Finally, while Gallo would question the propriety of requiring membership in the forum state's bar as a prerequisite to membership in a District Court's bar, he has failed to preserve this particular issue for appeal. In his brief to the Court of Appeals, Petitioner stated that he "does *not* question the power of a United States District Court to require admission to the bar of its forum state as a prerequisite to admission to practice before it." (*See* Dist. Ct. App., *infra*, at 14a) (emphasis added) Gallo thus

waived any right he may have had to question the propriety of requiring admission to the forum state's bar as a prerequisite to admission to a federal court's bar.

For all of these reasons, the District Court did not abridge Gallo's rights to substantive due process by applying Local Rule 1.5(a) to him, and this Court should not issue the writ.

C. The District Court Afforded Gallo Procedural Due Process By Providing the Public With Notice of the Proposed Amendment to Local Rule 1.5(a).

Gallo's argument that the enactment of Local Rule 1.5(a) somehow violated his right to procedural due process fails badly. *First*, as shown below, Gallo is wrong in asserting that he or similarly situated attorneys were entitled to mailed notice of the proposed revision of Local Rule 1.5(a). *Second*, the District Court provided several types of notice of the proposed change and held public hearings regarding the change, consistent with the requirements of due process.

1. Gallo's suggestion that the District Court was required to provide individual notice to each of its 6,796 prior admittees before amending Local Rule 1.5(a) is incorrect.

Gallo's first argument that the District Court violated his right to procedural due process is that, before amending Local Rule 1.5(a), the District Court was required to provide individual notice to each of the 6,796 attorneys previously admitted to practice before it, including him.

(Pet. Br. at 18-19). This argument fails, because the promulgation of Local Rule 1.5(a) was legislative in nature, because this Court's case law does not require mailed notice, and also because Local Rule 1.5(a)'s application to Gallo was not punitive in nature.

To understand why Local Rule 1.5(a) was legislative in nature, and thus required less prior notice than an adjudicative act, it is important first to examine the law defining legislative action. As the Court of Appeals stated, whether a party who is to be deprived of property "is entitled to individual notice and a pre-deprivation hearing depends upon the character of the action. When the action is purely legislative, the statute satisfies due process if the enacting body provides public notice and open hearings." (Pet. App. at 19a) (citing *Texaco v. Short*, 454 U.S. 516, 536 (1982); 28 U.S.C. § 2071(b)) In other words, where legislative action is taken that affects "more than a few people," individual notice of the law is not required. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915). If the action is adjudicative, affecting a small number of persons, due process requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Londoner v. Denver*, 210 U.S. 373, 385 (1908).

As the Court of Appeals correctly stated, in order to determine whether an action is legislative, requiring no individual notice to affected persons, or adjudicative, requiring individual notice to affected persons, one must consider "whether the government action applies to specific individuals or to unnamed and unspecified persons," "whether the promulgating agency considers

general facts or adjudicates a particular set of disputed facts," and "whether the action determines policy issues or resolves specific disputes between particular parties." (Pet. App. at 20a) (citing *United States v. Fla. E. Coast R.R. Co.*, 410 U.S. 224, 244-46; *Harris v. County of Riverside*, 904 F.2d 497, 501 (9th Cir. 1990), *Brown v. McGarr*, 774 F.2d 777, 780 (7th Cir. 1985)).

It is difficult to imagine an action to be taken by a District Court that was more purely legislative, or less adjudicative, than then amendment of Local Rule 1.5(a). Amended Local Rule 1.5(a) did not apply to specific persons, but rather to any and all attorneys currently practicing or prospectively practicing in the District Court. In promulgating the rule, the District Court was not intent on resolving a set of disputed facts, but rather considered the general facts of who should be admitted to practice before it. In addition, the promulgation of the rule did not resolve a specific dispute, but rather set policy for the court. For all of these reasons, the District Court's action was purely legislative. *See Texaco*, 454 U.S. at 536; *Bi-Metallic Inv. Co.*, 239 U.S. at 445.

Gallo's argument that he was owed advance notice of the revision fares no better. Gallo suggests that the "posting of notices in Arizona federal courthouses" was not "reasonably calculated" to apprise members of the federal bar of the proposed rule change. (Pet. Br. at 21) Gallo's argument that he should have received mailed notice of the proposed change because his address was known to the District Court is unpersuasive. (*See id.*) Gallo cites *Mullane*, *supra*, and to *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), incorrectly claiming that both cases stand for the proposition that due process always requires mailed notice where an address is known.

Gallo's citation to *Mullane* and *Mennonite Bd. of Missions* is unavailing, because those cases are easily distinguished from this one, and because he misstates them. *Mullane* involved a situation in which the *only* notice provided to trust beneficiaries of the judicial settlement of trust accounts was publication in a local newspaper. *See Mullane*, 339 U.S. at 307-09. The Court held that the dissemination of notice of the proceedings by newspaper publication *only* was insufficient. *See id.* at 314. *Mennonite Bd. of Missions* concerned the issue of whether published and posted notice to property owners of pending proceedings to sell their property for non-payment of taxes was sufficient. *See Mennonite Bd. of Missions*, 462 U.S. at 792. The Court held that, because the notices were designed to attract prospective buyers and because the property owners had *already* shown a proclivity to fail to take steps to protect their property, notice should have been provided by mail. *See id.* at 798-99.

The instant case, however, does not involve the fleeting publication of notice in a local newspaper, as in *Mullane*, or a small number of known property owners who have already failed to protect their property interests, as in *Mennonite Bd. of Missions*. This case involves a large group of attorneys – 6,796 – many of whom, like Petitioner, had never appeared before the District Court prior to the rule change, and many of whom, like Petitioner, lived out of state. Furthermore, Petitioner and the other similarly situated attorneys are not only presumed, but are in fact required, to be familiar with the rules of the courts before which they practice and to keep themselves informed of those rules and any changes thereto. *See, e.g.*, MODEL RULES OF PROF. CONDUCT R. 1.1.

In addition, neither *Mullane* nor *Mennonite Bd. of Missions* stand for the proposition that mailing is the only form of acceptable notice. In fact, in *Mullane*, the Court stated that, while personal service "within the jurisdiction is the classic form of notice always adequate in any type of proceeding," it "has not in all circumstances been regarded as indispensable to the process due residents, and it has more often been held unnecessary as to non-residents." *Mullane*, 339 U.S. at 313-14. In fact, the Court stated, a "construction of the Due Process Clause which would place impossible or impracticable obstacles in the way [of the party required to give notice] could not be justified." *Id.*

All that is required under *Mullane* is notice that: (1) "reasonably convey[s] the required information" and (2) "afford[s] a reasonable time for those interested to make their appearance." *Id.* at 314. In light of the cost of mailing notices of the rule change to every attorney ever admitted to practice generally before the District Court, the "ubiquity" of the Internet (Pet. Br. at 21), the duty imposed upon Gallo and all other attorneys to acquire and maintain familiarity with the rules of the courts before which they appear, and the *multiple* methods by which the District Court provided notice of the rule change, Gallo cannot reasonably contend that the District Court fell below the requirements of due process in providing notice of the rule change.

Gallo's argument that the District Court was required to mail notice to all previously admitted attorneys also suffers from a deficiency common to much of his petition, as he once again relies upon inapposite cases that addressed punishment of an attorney. (Pet. Br. at 19-20) The *McGarr* case, *supra*, which the Court of Appeals found "indistinguishable" from the instant case, illustrates why

Gallo's assumption that he was being punished by Local Rule 1.5(a) is wrong, and why the revision was valid. (Pet. App. at 20a) In *McGarr*, the Illinois District Court had promulgated a rule that required trial attorneys practicing before it to possess a certain level of trial experience and that essentially "revoked" the licenses of attorneys previously admitted to practice before the court who did not have sufficient experience. *See McGarr*, 774 F.2d at 779. The plaintiff contended, as does Gallo here, that the rule had "disbarred him;" however, the Seventh Circuit noted that disbarment is a penalty for misconduct by an individual attorney, while the rule in question was "adopted in response to fact finding that was not focused on individual attorneys." *Id.* at 780. The court therefore upheld the rule. *See id.*

As the Court of Appeals recognized in this case, Local Rule 1.5(a) did not "disbar" Gallo. The Court of Appeals' view on this subject is fully consistent with dictionary definitions of disbarment and cases construing that term. *E.g.*, BLACK'S LAW DICTIONARY 463 (6th ed. 1990) (disbarment is an "[a]ct of court in suspending attorney's license to practice law. A disbarment proceeding is . . . disciplinary in nature . . ."); *Wall*, 107 U.S. at 273 (disbarment is a sanction for "gross cases of misconduct."); *Sealed Appellant*, 194 F.3d at 674 ("Disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously, adversely reflects on the attorneys' fitness to practice."); SUP. CT. R. 8. The revision to Local Rule 1.5(a) was not punitive but was instead regulation of the entire class of attorneys practicing before the District Court. Accordingly, Gallo was not entitled to individualized notice of the rule change. (Pet. App. at 22a)

2. The District Court's public notice and hearings on the revisions to Local Rule 1.5(a) satisfied due process.

Specific consideration of the District Court's public notices and public hearings concerning revised Local Rule 1.5(a) also shows that the District Court afforded Gallo any procedural due process he was owed.

On May 19, 1999, the District Court issued a Notice of Hearing advising that public hearings would be held regarding the rule change in both Phoenix and Tucson. (*See* Dist. Ct. App., *infra*, at 29a) On July 12, 1999, consistent with that notice, the Court received public comment on the proposed rules at these hearings. (*Id.*) Immediately after adopting the amended rule, the District Court: (1) posted notice of the amendments prominently on its Web site, www.azd.uscourts.gov, for at least six months; (2) posted notice of the amendment at the offices of the Clerk of the Court at both divisions of the District Court (Phoenix and Tucson); (3) mailed notice of the amendment to any out-of-state attorney admitted prior to September 15, 1999 who made a new appearance or requested a certificate of good standing; and (4) for over three months, placed a special notice of the amendment at the foot of every cover sheet used to transmit all orders and judgments to counsel of record. (Dist. Ct. App., *infra*, at 23a-27a) Under this Court's precedent, the District Court's provision of public notice and hearings is sufficient to afford Gallo the procedural due process owed to him. *See Texaco*, 454 U.S. at 536; *Bi-Metallic Inv. Co.*, 239 U.S. at 445. Gallo's claims fail.

III. PETITIONER GIVES THIS COURT NO REASON TO USE ITS "INHERENT SUPERVISORY POWER" TO INVALIDATE LOCAL RULE 1.5(a)

Petitioner asks that the Court exercise its supervisory power to invalidate Local Rule 1.5(a) and "reinstate" Petitioner and other similarly situated attorneys. (Pet. Br., at p. 22, citing *Frazier v. Heebe*, 482 U.S. 641 (1987)) As the Court of Appeals noted, however, in declining to exercise its own supervisory power to invalidate the rule, the supervisory power of a reviewing court "is not unbounded and may not be exercised absent a clear basis in fact and law." (Pet. App. at 31a) Petitioner has given this Court no basis in either fact or law to exercise that authority, and his request must fail.

This Court can exercise its supervisory powers "to ensure that . . . local rules are consistent with 'the principles of right and justice.'" *Frazier*, 482 U.S. at 645 (quoting *In re Ruffalo*, 390 U.S. 544, 554 (1986) (White, J., concurring)). In *Frazier*, the Court chose to exercise its supervisory power to strike down a local rule that required attorneys who practiced before the District Court for the Eastern District of Louisiana to reside or keep an office in Louisiana. *See id.* at 646. The Court considered the fact that the attorneys in question had *passed* the Louisiana state bar, thus there was no reason to believe that they were less competent than other attorneys, and the fact that attorneys who were residents of Louisiana were *not* required to keep offices in the state. *See id.* at 646-47. Based upon the foregoing facts, the Court found the rule to be arbitrarily discriminatory and, accordingly, used its supervisory power to strike it down. *See id.* at 646.

In this case, however, Local Rule 1.5(a) is wholly "consistent with 'the principles of right and justice.'" *Id.*

As the Court noted in *Frazier*, under Section 2071, "a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business. This authority includes the regulation of admission to its own bar." *Id.* at 645 (internal citations omitted). The District Court has done just what this Court has told the District Court it may do. It has implemented a rule that regulates admission to its bar, a rule that does not arbitrarily discriminate against out-of-state attorneys but rather, as the Court of Appeals correctly held, is rationally related to its legitimate interests in streamlining and administering its attorney rolls. Thus, an exercise in this case of this Court's supervisory power either to strike down Local Rule 1.5(a) or to reinstate Gallo and others like him would neither be warranted, nor consistent with *Frazier*.

CONCLUSION

This Court should deny Petitioner's Petition for a Writ of Certiorari because this case presents no conflicts among the Courts of Appeal or any important issues of law. The District Court's amendment to its Rule 1.5(a) was proper as a matter of law under Section 2071 and did not deprive Gallo of his right to substantive due process or procedural due process. Further, this Court should not exercise its supervisory authority to invalidate Rule 1.5(a).

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOMMIE L. BARTLETT, *et al.*, Plaintiffs, v. ARTHUR ANDERSEN, L.L.P., *etc., et al.*, Defendants.	Docket Number: **01-17332**
DAVID J. GALLO, Movant-Appellant, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Real Party in Interest.	**APPELLANT'S BRIEF**

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

Jurisdiction in the District Court

Title 28, U.S.C., Section 1331, conferred subject matter jurisdiction upon the District Court below. An additional basis for subject-matter jurisdiction is the inherent power of federal courts over attorney admissions to practice. *See, Chambers v. NASCO, Inc.*, 501 U.S. 32, 43; 111 S.Ct. 2123, 2132; 115 L.Ed.2d 27 (1991).

Jurisdiction in the Court of Appeals

Title 28, U.S.C., Sections [sic] 1291, confers subject matter jurisdiction upon this Court.

Dates Establishing Timeliness of Appeal

The interlocutory order on appeal **(hereinafter the "Order on Appeal")** was entered 2 October 2000. (*See,*

Order on Appeal, Docket Entry 56, reproduced at E/R 18-19.)[1] Arguably, the Order on Appeal constituted a "collateral order" which was immediately appealable of right. *See, Estate of Bishop v. Bechtel Power Corporation,* 905 F.2d 1272, 1274 (9th Cir. 1990) (explaining "collateral order" doctrine). However, even if the Order on Appeal *did* constitute a "collateral order" immediately appealable of right, Appellant, at his sole option, had the absolute right to defer perfection of the instant Appeal until after entry of final judgment. *See, Hook v. Arizona Department of Corrections,* 107 F.3d 1397, 1401 (9th Cir. 1997).

Final judgment **(hereinafter the "Final Judgment")** was entered 17 September 2001. (*See*, Final Judgment, Docket Entry 164, reproduced at E/R 20.) The Order on Appeal merged into the Final Judgment by operation of law. *See*, *Hook v. Arizona Department of Corrections*, *supra*, 107 F.3d at 1401. On 12 October 2001, Appellant timely perfected the instant Appeal by filing his Notice of Appeal. (*See*, Notice of Appeal., Docket Entry 169, reproduced at E/R 21-25; *cf.*: Rule 4 (a)(1), Fed.R.App.P.)

The Final Judgment is Final in Form

The Final Judgment is final in form, purporting to dispose completely of all claims of all parties. (*See*, Final Judgment, at E/R 20.)

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[1] References to "E/R" shall be to the Excerpts of Record. Where appropriate, page and line shall be indicated in the following format: "8:2" shall mean page 8, line 2; "8:2-21" shall mean page 8, lines 2 through 21; "8:2 to 9:16" shall mean page 8, line 2 through page 9, line 16.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for review:

Whether the District Court[2] erred in concluding that an amendment to the District Court's Local Rule 1.5 **(hereinafter "Rule 1.5")**, which limited " . . . continuing membership in the bar of [the District Court] . . . to attorneys who are active members in good standing of the State Bar of Arizona," operated to disbar Appellant, along with other affected attorneys who, like Appellant, were admitted to practice before the District Court prior to the effective date of the amendment, but who are not members of the State Bar of Arizona.

Whether the District Court erred in failing to conclude that, the absence of notice by mail of the disbarment proceedings offended Appellant's due process rights (and the due process rights of the other affected attorneys).

Whether this Court should exercise its supervisory power over the District Court to direct that Local Rule 1.5(a) shall be applied prospectively (but not retroactively so as to disbar previously-admitted counsel), so as to avoid the necessity of determining constitutional issues of great magnitude.

STATEMENT OF THE CASE

1. Nature of the Case

Appellant is an attorney who was engaged to represent the Plaintiffs in the underlying civil action. During

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[2] The Hon. Stephen M. McNamee, Chief United States District Judge for the District of Arizona.

the course of the underlying civil action, Appellant learned that the Clerk of the District Court had stricken Appellant's name from the roll of attorneys admitted to practice before said Court, and that the Clerk had done so without affording any notice to Appellant.

The instant Appeal is brought from an order (*i.e.*, the Order on Appeal) which determined that Appellant (along with other affected attorneys) had been lawfully disbarred from practice before the District Court by operation of an amendment to the District Court's Local Rule 1.5, which, as amended, purports to limit " . . . continuing membership in the bar of [the District Court] . . . to attorneys who are active members in good standing of the State Bar of Arizona."

2. **Course of Proceedings**

The underlying civil action was commenced in May of 2000. In August of 2000, Appellant was informed by the Clerk of the District Court that " . . . a review of our files indicates that you have not been admitted to practice in this Court." (*See*, Clerk's Letter, at E/R 13.) Appellant responded to the Clerk's Letter by filing an *Ex Parte* Application for Order Clarifying Status of Counsel, *Etc.*, whereby Appellant called to the attention of the District Court the fact that Appellant had previously been admitted to the bar of the District Court, and requested an order confirming that Appellant remained a member of the bar. (*See, Ex Parte* Application, at E/R 2-17.)

3. **Disposition in the District Court**

The District Court entered an order (*i.e.*, the Order on Appeal) which determined that Appellant had been

disbarred upon amendment to the District Court's Local Rule 1.5, which, as amended, purports to limit "continuing membership" to attorneys who are also members of the State Bar of Arizona. (*See*, Order on Appeal, at E/R 18-19.)

STATEMENT OF FACTS

Appellant is a member of, *inter alia*, four (4) state bars,[3] and has been admitted to practice before, and has practiced before, the United States Supreme Court,[4] three United States Courts of Appeals, and ***numerous*** United States District Courts. (*See*, *Ex Parte* Application, at E/R 3:2-10.) It is undisputed that Appellant is not now, nor has he ever been, a member of the State Bar of Arizona. (*See, Ex Parte* Application, at E/R 4:3.)

On 28 July 1995, Appellant was duly admitted as a member of the bar of the District Court. (*See*, Clerk's Certificate, at E/R 10.) As the District Court noted:

> "[Appellant] was admitted to practice before the bar of [the District court] . . . under then-Local Rule 1.5. Then-Local Rule 1.5 allowed nonresident attorneys to gain admission to practice based on their admission to the bar of a United States District Court."

(*See,* Order on Appeal at E/R 18:19½-21½.)

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[3] Including the plenary bar of the District of Columbia.

[4] Assuming unsuccessful petitions for certiorari constitute "practice" before the Supreme Court. *See, e.g., State of Kansas*, et al. *v. United States of America*, et al., 16 F.3d 436 (D.C. Cir. 1994), *certiorari denied*, 513 U.S. 945; 115 S.Ct. 354; 130 L.Ed.2d 309 (1994).

At all times from and after his admission to the bar of the District Court, Appellant duly reported his residence address and business address to the Clerk of the District Court. Such reports were in writing, and were transmitted via U.S. Certified Mail (Return Receipt Requested). (*See*, Report of Address Change, and Return Receipt for Certified Mail executed on behalf of the Clerk of the District Court, at E/R 11-12.)

In September of 1999, the District Court amended its Local Rule 1.5. As the District Court explained:

> "On September 15, 1999, the United States District Court for the District of Arizona formally adopted revised Local Rules, which contained substantial changes to Local Rule 1.5. Local Rule 1.5(a) now states in relevant part, '[a]dmission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona.' Similarly, Local Rule 1.5(b) also states, 'Except as herein otherwise provided, only members of the bar of this Court shall practice in this District.'"

(*See*, Order on Appeal at E/R 18:21½-27½; *see also*, General Order No. 99-15, **hereinafter the "Amendment Order"**, reproduced at E/R 1.)

In or about May of 2000, Appellant was retained by numerous individuals to represent them as plaintiffs in a civil action for recovery of damages involving the collapse of a Five Hundred Million Dollar ($500,000,000.00) Ponzi scheme which had operated under the name, "Baptist Foundation of Arizona." (*See*, *Ex Parte* Application, at E/R 4:4-6.) Appellant determined that venue of the then-proposed civil action was properly fixed within the District

of Arizona, by operation of Title 28, U.S.C., Sections 1391(b), 1391(c), and 1409(a). (*See*, *Ex Parte* Application, at E/R 4:7-8.) Upon making such determination, and prior to commencement of the underlying civil action, Appellant reviewed the Local Rules of the District Court, and noted the above-referenced amendments to Local Rule 1.5(a). (*See, Ex Parte* Application, at E/R 4:9-11.) Based upon the constitutional principles discussed *infra*, Appellant determined that the amendments to Local Rule 1.5(a) could not have been intended to terminate Appellant's license to practice before the District Court, and that Appellant's license to practice before the District Court remained extant. (*See*, *Ex Parte* Application, at E/R 4:12-14.) Believing that he was licensed to practice before the District Court, Appellant participated in the filing of the underlying civil action, wherein Appellant served as co-counsel of record. (*See*, *Ex Parte* Application, at E/R 4:15-16.)

On or about 1 September 2000, Appellant received a letter **(hereinafter the "Clerk's Letter")** from the Clerk of the District Court which stated, *inter alia:*

> "Your name has appeared on pleadings filed with this court; however a review of our files indicates that you have not been admitted to practice in this Court."

(*See*, Clerk's Letter, at E/R 13.) The Clerk's Letter warned Appellant that if Appellant failed to apply by 29 September 2000 for admission *pro hac vice*, Appellant would " . . . be removed as counsel of record," and that filing of additional pleadings in the absence of admission " . . . could . . . subject [Appellant] to sanctions . . . " (*See*, Clerk's Letter, at E/R 13.)

At no time prior to Appellant's receipt of the Clerk's Letter (*i.e.*, at no time prior to 1 September 2000) did Appellant receive notice that the District Court was considering entry of the Amendment Order, or that the District Court might interpret the amended Local Rule 1.5 (a) as operating to terminate Appellant's licence to practice before the District Court. (*See*, *Ex Parte* Application, at E/R 4:23½ to 5:1.)

In response to the Clerk's Letter, Appellant promptly filed his *Ex Parte* Application for Order Clarifying Status of Counsel, or, Alternatively, for Order *Nunc Pro Tunc* Granting Admission *Pro Hac Vice*. (*See*, *Ex Parte* Application, reproduced at E/R 2-17.)

In considering Appellant's *Ex Parte* Application, the District Court correctly noted that Appellant had not been the subject of any disciplinary action, or even of any complaint. (*See*, Order on Appeal, at E/R 19:13-17.) However, the District Court held that Appellant had been disbarred by the amendment to Local Rule 1.5. (*See*, Order on Appeal, at E/R 18-19.) The District Court implied that, because Appellant remained free to apply for admission *pro hac vice*, Appellant had assertedly not been harmed by the disbarment, and thus was not entitled to notice and an opportunity to be heard prior to entry of the order effecting the disbarment. (*See*, Order on Appeal, at E/R 19:13-17.) The District Court required that Appellant pay a $25.00 application fee as a prerequisite to admission *pro hac vice*. (*See*, Order on Appeal, at E/R 19:22.)

STATEMENT OF THE STANDARD OF REVIEW

The Order on Appeal is based entirely upon conclusions of law, and is thus reviewed *de novo*. *See*, *Matter of*

McLinn, 739 F.2d 1395, 1397 (9th Cir. 1984) (*en banc*), noting that United States Courts of Appeals conduct *de novo* review of district courts' conclusions of law.

To the extent this Court may elect to utilize its supervisory power so as to avoid consideration of constitutional issues, this Court has plenary power to invalidate in whole or in part the District Court's Local Rule 1.5, so as to ensure that the Local Rules of the District Court are consistent with " . . . the principles of right and justice." *See*, *Frazier v. Heebe*, 482 U.S. 641, 645; 107 S.Ct. 2607, 2611; 96 L.Ed.2d 557 (1987) (citation, internal quotation marks, and attribution omitted), wherein the Supreme Court utilized its supervisory power to invalidate a local rule, and thereby obviated the necessity of addressing a constitutional question.

SUMMARY OF THE ARGUMENT

Appellant is an officer of the District Court who, like the Judges of the District Court, holds his office during good behavior. Once admitted to practice, an attorney may not be discharged from his or her life-tenured office except upon judgment of misconduct or unfitness, entered after full due process has been afforded the attorney. The requisite due process includes, at a minimum, advance notice by mail of the proceedings wherein the order effecting disbarment is to be entered, notice of the precise nature of the charges, and an opportunity to be heard in defense against those charges.

In the case at bar, the District Court purported to disbar Appellant, and presumably many other licensed attorneys, in the absence of just cause, in the absence of

notice of the proceedings, and in the absence of even notice *ex post facto*.

This Court should, if fairly possible, interpret the District Court's Local Rule 1.5 to operate prospectively (so as to have no effect upon the licenses of attorneys admitted prior to the effective date of the amendment). If this Court cannot do so, this Court should utilize its supervisory power to modify the operation of the District Court's Local Rule 1.5 to operate prospectively. If necessary, this Court should hold that the District Court's Local Rule 1.5 is unconstitutional as applied to attorneys admitted prior to the effective date of the amendment who are not members of the State Bar of Arizona.

ARGUMENT

I. APPELLANT'S OFFICE, LIKE THE OFFICES OF THE MEMBERS OF THE ARTICLE III JUDICIARY, IS LIFE-TENURED DURING GOOD BEHAVIOR

Appellant does not question the power of a United States District Court to require admission to the bar of its forum state as a prerequisite to admission to practice before it. *See*, *Giannini v. Real*, 911 F.2d 354 (9th Cir. 1990). The primary questions presented by the instant Appeal are: (a) whether a District Court may disbar licensed attorneys by requiring -- through a local rule adopted ***subsequent to*** the attorney's admission to practice – membership in the state bar of its forum state, and (b) if so, whether the disbarment may be effected without notice to the disbarred attorneys. The instant Part I of the Argument addresses the first of these two questions.

Article III, Section 1, of the United States Constitution provides, *inter alia*:

> "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour . . ."

(*See*, U.S. Const., Art. III, § 1.) "The 'good Behavior' Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment." *Northern Pipeline Construction Company v. Marathon Pipe Line Company*, 458 U.S. 50, 59; 102 S.Ct. 2858, 2865; 73 L.Ed.2d 598 (1982). (Citation omitted.)

Attorneys licensed to practice before courts of the United States, like members of the Article III judiciary, hold their offices during "good behavior". As the Supreme Court has held, such attorneys are:

> " . . . officers of the court . . . ***[who] 'hold their office during good behavior, and can only be deprived of it for misconduct . . .'***"

Ex Parte Robinson, 86 U.S. 505, 512; 22 L.Ed. 205; 19 Wallace 505 (1873), *quoting*, *Ex Parte Garland*, 71 U.S. 333, 378; 18 L.Ed. 366; 4 Wallace 378 (1866). (Emphasis added.)[5] Although there is no requirement that attorney

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[5] It is axiomatic that all decisions of the Supreme Court remain binding upon this Court in the absence of subsequent authority to the contrary. As one Fifth Circuit panel wrote: "Mere age does not weaken the strength of an opinion. Nor, obviously, can it reduce the scope of constitutional protection." *City of Houston v. Federal Aviation Administration*, 679 F.2d 1184, 1197 (5th Cir. 1982). *See also*, *Thomas v. Anchorage Equal Rights Comm'n*, 165 F.2d 692, 704 (1999), *vacated on other grounds*, 220 F.3d 1134, 1140 (9th Cir.2000) (*en banc*), *cert. denied*, 531 U.S. 1143, 121 S.Ct. 1078, 148 L.Ed.2d 955 (2001).

(Continued on following page)

misconduct must be established upon impeachment, the Supreme Court has held that the power to terminate a license to practice before a United States District Court:

> " . . . can only be exercised where there has been such conduct on the part of the parties complained of as shows them to be unfit to be members of the profession."

Ex Parte Robinson, 86 U.S. at 512.

> "The attorney and counsellor being, by the solemn judicial act of the court, ***clothed with his [or her] office, does not hold it as a matter of grace and favor***. The right which it confers upon him [or her] to appear for [litigants], and to argue causes, is something ***more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature***. It is a right of which he [or she] can only be deprived by the judgment of the court, for moral or professional delinquency."

Ex Parte Garland, 71 U.S. at 379. (Emphasis added.)

The Supreme Court has even held that, where one of the requirements for admission to practice before a federal court was (at the time of admission) membership in the bar of a state court, such requirement is:

> " . . . exhausted upon admission to [the federal bar] which [the state bar membership] has served to secure . . . [such that "loss" of the state

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(Referring to older decisions of the Supreme Court as: " . . . remain[ing] on the books and . . . binding on lower courts . . . [This Court is] not at liberty to ignore them.")

> law license] . . . by any . . . cause not involving unworthiness [*i.e.*, misconduct], . . . would be wholly negligible upon the right to continue to be a member of the [federal] bar . . ."

Snelling v. Radford, 243 U.S. 46, 49; 37 S.Ct. 377, 378 (1917). Thus, attorneys who are members of the State Bar of Arizona who are today admitted under the current version of the District Court's Local Rule 1.5 are free to permit their Arizona law licenses to lapse (*e.g.*, for non-payment of dues), without placing at risk their licenses to practice before the District Court.

In the case at bar, Appellant possessed all qualifications for admission to the bar of the District Court at the time he was duly admitted to said bar. Appellant holds his office during good behavior, and his license to practice before the District Court cannot be terminated in the absence of misconduct.

II. THE DISTRICT COURT ERRED IN ENTERING AN ORDER WHICH PURPORTED TO DISBAR APPELLANT WITHOUT AFFORDING APPELLANT NOTICE OF THE PROCEEDINGS AND AN OPPORTUNITY TO BE HEARD

The instant Part II of the Argument establishes that disbarment may ***never*** be effected in the absence of notice to the disbarred attorneys.

Disbarment proceedings " . . . are adversary proceedings of a quasi-criminal nature." *In the Matter of: Ruffalo*, 390 U.S. 544, 551; 88 S.Ct. 1222, 1226; 20 L.Ed.2d 117 (1968). (Citations omitted.)

> "Disbarment, designed to protect the public, is a punishment or penalty imposed on the

> lawyer. . . . He [or she] is accordingly entitled to procedural due process, which includes fair ***notice*** of the charge."

In the Matter of: Ruffalo, 390 U.S. at 550; 88 S.Ct. at 1226. (Emphasis added; citations omitted.)[6] A license to practice before a United States District Court may only be terminated upon a judicial determination of misconduct, rendered " . . . after ***opportunity to be heard*** has been afforded." *Ex Parte Robinson*, 86 U.S. at 512. (Emphasis added.)

The Supreme Court has held that, prior to entry of any order effecting disbarment, an attorney must be afforded the same due process rights of notice and an opportunity to be heard which must be afforded a litigant prior to deprivation of a property interest:

> "Before a judgment disbarring an attorney is rendered he [or she] should have ***notice*** of the grounds of complaint against him [or her] and ample ***opportunity of explanation and defence***. This is a rule of natural justice, and should be equally followed when proceedings are taken to deprive him [or her] of his [or her] right to practice his [or her] profession, as when they are taken to reach his [or her] ***real or personal property***."

Ex Parte Robinson, 86 U.S. at 512. (Emphasis added.)[7]

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[6] *See also*, concurring opinion of Justice Harlan at 390 U.S. 552; 88 S.Ct. 1227.

[7] Other courts have more explicitly held that a license to practice law is a property interest protected by the Due Process Clause. *See, e.g., Conway v. State Bar of California* (1989), 47 Cal.3d 1107, 1113; 255

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Due process requires that the attorney be afforded " . . . fair notice as to the ***reach*** of the [proceedings resulting in disbarment] and [***also*** of] the ***precise nature of the charges*** . . ." *In the Matter of: Ruffalo*, 390 U.S. at 552; 88 S.Ct. at 1226. (Emphasis added.)

Notice by ordinary U.S. mail is the minimum notice required to afford due process where, as here, the mailing address of the person to be affected is ascertainable. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318; 70 S.Ct. 652, 659; 94 L.Ed.2d 865 (1950).

In the case at bar, at the time the Judges of the District Court issued their Amendment Order which, *inter alia*, amended Local Rule 1.5, the Clerk of the District Court had Appellant's name and address (and also the names and addresses of numerous other licensed attorneys situated similarly to Appellant). Nevertheless, Appellant was afforded no notice whatsoever that the Judges were considering entry of the Amendment Order which (according to the District Court below) had the effect of disbarring Appellant. (Presumably, no notice was afforded any of the other licensed attorneys situated similarly to Appellant). Even more troubling, Appellant was afforded absolutely no notice when the Clerk of the District Court struck Appellant's name from the membership roll of the District Court's bar. (Presumably, no notice was afforded any of the other similarly-situated attorneys, many of whom, as of

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Cal.Rptr. 390, 393; 767 P.2d 657, 660 (license to practice law), *citing*, *Barry v. Barchi*, 443 U.S. 55, 64; 99 S.Ct. 2642, 2649; 61 L.Ed.2d 365 (1979) (the latter holding that the holder of a license to train horses had "a property interest in his license sufficient to invoke the protection of the Due Process Clause").

this date ***may not even be aware that they have been disbarred***.) This absence of notice, standing alone, renders the amendment to Local Rule 1.5 unconstitutional as applied to Appellant, and as to all other attorneys admitted to practice prior to the effective date of the Amendment Order (*i.e.*, prior to 15 September 1999).

III. THIS COURT SHOULD, IF FAIRLY POSSIBLE, CONSTRUE LOCAL RULE 1.5 IN SUCH MANNER AS WOULD PRESERVE ITS CONSTITUTIONALITY; ALTERNATIVELY, THIS COURT SHOULD UTILIZE ITS SUPERVISORY POWER TO MODIFY LOCAL RULE 1.5; IN EITHER CASE, THIS COURT SHOULD DIRECT THE DISTRICT COURT TO RESTORE THE *STATUS QUO ANTE* BY RESTORING APPELLANT'S NAME TO THE ROLL OF LICENSED ATTORNEYS, AND BY TAKING OTHER APPROPRIATE CURATIVE ACTION

The Supreme Court has adopted the prudential rule that a federal court should avoid addressing constitutional questions where not necessary to the disposition of the case or controversy before it. *See*, *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 7-8; 113 S.Ct. 2462, 2465-2466; 125 L.Ed.2d 1 (1993). For example, where possible, an Act of Congress will be construed, if "fairly possible", so as to avoid the necessity for resolution of any constitutional question. *Zobrest*, 509 U.S. at 7; 113 S.Ct. at 2465. *See also*, *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363, 369; 91 S.Ct. 1400, 1404-1405; 28 L.Ed.2d 822 (1971).

In the case at bar, Appellant requested that the District Court interpret the amended Local Rule 1.5 as applicable only to new admissions occurring subsequent to

the effective date of the Amendment Order. (*See*, *Ex Parte* Application, at E/R 6:7 to 7:12.) The District Court refused to so interpret the Amendment Order. (*See*, order on Appeal, *passim*, reproduced at E/R 18-19.)[8]

This Court is not bound by the District Court's interpretation of the District Court's prior order. *See, Federal Communications Commission v. Pottsville Broadcasting Company*, 309 U.S. 134, 141; 60 S.CT. 437, 440; 84 L.Ed. 656 (1940). ("Nor is a court's interpretation of the scope of its own mandate necessarily conclusive.") Accordingly, this Court is free to consider whether Local Rule 1.5, as amended, purports to disbar attorneys who are not members of the State Bar of Arizona, but who were admitted to practice before the District Court prior to the effective date of the Amendment Order.

Alternatively, if this Court concurs in the District Court's interpretation of Local Rule 1.5, as amended, then this Court may utilize its supervisory power to direct the District Court to limit the application of the Local Rule 1.5, as amended, to prospective admissions to the bar of the District Court. Such a limitation could be effected by simply striking the words, "and continuing membership in", from the first sentence of Local Rule 1.5.

CONCLUSION

This Court's ruling in the case at bar should be broad in scope, so as to restore the licenses of all attorneys

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[8] The District Court was not alone in so interpreting Local Rule 1.5, as amended. Recall that the Clerk of the District Court had previously stricken Appellant's name from the District Court's roll of licensed attorneys.

purportedly disbarred by the Amendment Order. This Court should direct the District Court to order the Clerk of the District Court to restore to its roll of licensed attorneys all counsel whose names were previously stricken therefrom as a result of the Amendment Order. This Court should direct the District Court to order the Clerk of the District Court to provide written notice to all attorneys whose names were previously stricken that their names had been stricken from the roll, but that, pursuant to order of this Court, their names have been restored to the roll. This Court should also publish its decision in this case, to ensure that notice of the reinstatement is made available to those attorneys who previously learned that they had been disbarred, and who thereafter believed they had no reason to notify the Clerk of the District Court of their current mailing addresses. Finally, this Court should notify each active Judge of the District Court of its decision in this case, so that such Judges will be aware that attorneys previously disbarred by operation of the Amendment Order are authorized to practice before the District Court.

Dated: 19 February 2002 Respectfully submitted,

DAVID J. GALLO, ESQ.
12702 VIA CORTINA, SUITE 500
DEL MAR, CALIFORNIA
92014-3769
Telephone: (858) 509-3652

/s/ David J. Gallo
By: David J. Gallo,
California Bar No. 127722,
Movant-Appellant,
in propria persona

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOMMIE L. BARTLETT, et al., Plaintiffs, -v- ARTHUR ANDERSEN, L.L.P., etc. et al., Defendants.	Docket Number 01-17332
DAVID J. GALLO, Movant-Appellant, -v- UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Real Party in Interest.	

SUPPLEMENT TO RECORD

Daniel J. McAuliffe
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SNELL & WILMER LLP
One Arizona Center
Phoenix, Arizona 85004-2202
(602) 382-6272

UNITED STATES DISTRICT COURT [SEAL]
District of Arizona
OFFICE OF THE CLERK

MEMORANDUM

DATE: February 7, 2003

TO: Daniel J. McAuliffe, Esq.

FROM: Richard H. Weare, District Court Executive and Clerk of Court [/s/ Richard H. Weare]

RE: Establishment of *Pro Hac Vice* Requirement

In response to your request for information relating to the establishment of a *pro hac vice* requirement in this district, particularly as it relates to attorney David J. Gallo, I offer the following:

- David J. Gallo was admitted to practice in the District of Arizona on July 28, 1995, based solely on his status as an attorney admitted to practice in the Northern District of Texas. At that time, Local Rule 1.5 (c) (*attachment 1*) allowed for any member in good standing of the bar of any Federal Court, and who neither resides nor maintains an office for the practice of law in the district of Arizona, to be admitted to practice in this District upon appropriate application, completion of the oath upon admission, and payment of an admission fee of fifty dollars ($50) to the Clerk, U. S. District Court. Attached is a copy of Mr. Gallo's application for admission (*attachment 2*) and certificate of admission (*attachment 3*).

- On September 15, 1999, Local rule 1.5 (*attachment 4*) was amended to establish a *pro hac vice* provision that pertains to all attorneys

for whom one or more of the following apply (1) the attorney does not reside in Arizona, (ii) the attorney is not regularly employed in Arizona, or (iii) the attorney is not regularly engaged in the practice of law in Arizona.

- In response to the amendment to Local Rule 1.5, this office determined that 6,796 out-of-state attorneys were affected by the change – the vast majority of whom were not actively practicing in this district court. Because the issuance of separate notices to all affected attorneys would pose an unreasonable administrative hardship on this office, this office instead attempted to publicize the rule change in a way that would effect timely notice to those lawyers who were actively practicing in this district and/or who otherwise stayed abreast of local rule activity in this district.

  Specifically, the following actions were taken immediately following the adoption of the amended local rules in September 1999:

  1. Notice of the local rule amendments was prominently posted on the court's website at www.azd.uscourts.gov. In addition, a summary (*attachment 5*) was posted on the website to assist lawyers in identifying specific changes to the rules. These postings appeared for approximately six months or more.

  2. A notice advising of the change to Local Rule 1.5 (*attachment 6*) was prominently posted and made available in the Customer Services/Intake area of the Clerk's Offices in the Phoenix and Tucson divisions. This same notice was mailed to

any out-of-state attorney admitted prior to 9/15/99, who made a new appearance and/or requested a certificate of good standing. These activities occurred for a period of approximately three months.

3. For a period of approximately three months or more, a special notice (*attachment 7*) appeared at the foot of the cover sheet used to transmit all orders and judgments issued in any civil or criminal case via facsimile to counsel of record.

4. Clerk's Office representatives made a presentation at a Federal Bar Association luncheon in Phoenix in January 2000 during which the changes to the local rules were reviewed.

- At an administrative meeting of the court in October 1999, the district judges determined that it was appropriate to establish a grace period for those out-of-state attorneys who had been admitted to practice in Arizona, but had not yet made an appearance. They directed the Clerk as follows:

> *Any out of state attorney admitted to practice before the Bar of this Court between September 15, 1998 and September 14, 1999, and who has made no appearances in this court during that time frame, will be granted one pro hac vice appearance without payment of the fee. Any subsequent appearances by that attorney will be subject to the $25 pro hac vice fee under the provisions of Local Rule 1.5(b)(1)(3).*

- Our records indicate that Mr. Gallo's first appearance in a case in this district was on May 8, 2000, as co-counsel of record for the plaintiff in CIV 00-852-PHX-SMM.
- On August 30, 2000, the attorney admissions clerk sent a letter to Mr. Gallo advising of the court's *pro hac vice* requirement (*attachment 8*). Mr. Gallo responded with an "*ex parte* application for order clarifying status of counsel, or, alternatively, for order *nunc pro tunc* granting admission *pro hac vice*" (*attachment 9*), along with a proposed order (*attachment 10*).
- On October 2, 2000, this office filed an order by Judge Stephen M. McNamee (*attachment 11*) denying Mr. Gallo's application and, having already received a *pro hac vice* application, directed him to submit the $25.00 fee for *pro hac vice* admission. On October 17, 2002, this office deposited Mr. Gallo's $25.00 *pro hac vice* admission fee and issued a receipt to him (*attachment 12*).

I hope this information is helpful. If I can be of any further assistance, please feel free to contact my office.

Attachments – copies of:

1. Local Rule 1.5 dated January 1994.
2. Mr. Gallo's 1995 application for admission.
3. Mr. Gallo's 1995 certificate of admission
4. Local Rule 1.5 dated September 15, 1999.
5. Summary of rule changes as posted on court's website.
6. Notice re change to Local Rule 1.5.

7. Facsimile notice to counsel re rule changes (sample)
8. Letter to Mr. Gallo re admission status.
9. Mr. Gallo's *ex parte* application.
10. Mr. Gallo's proposed order.
11. Order denying Mr. Gallo's application.
12. Receipt for *pro hac vice* fee.

cc. Chief Judge Stephen M. McNamee

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA
230 N. First Avenue
Room 6077
Phoenix, Arizona 85025

Stephen M. McNamee
United States District Judge

Telephone: (602) 514-7016
Fax: (602) 514-7173

May 19, 1999

NOTICE OF HEARING

In accordance with Rule 1.18 of the Rules of Practice of the United States District Court for the District of Arizona (hereafter "Local Rules"), a public hearing on the proposed amendments to the Local Rules will be held on Monday, July 12, 1999, at 9:00 a.m. before the Honorable Stephen M. McNamee at the United States Courthouse in Phoenix and at 3:30 p.m. before the Honorable John M. Roll at the James A. Walsh Courthouse in Tucson.

The proposed amendments to the Local Rules are available at the District of Arizona Web site located at www.azd.uscourts.gov under the topic of "1999 Local Rules Amendment."

/s/ Stephen M. McNamee
Honorable Stephen M. McNamee
United States District Judge
Chair, Local Rules Committee